UNITED STATES
INTERNATIONAL TRADE COMMISSION

In the Matter of:	)	
	)	Investigation Nos.:
DURUM AND HARD RED SPRING	)	701-TA-430 and
WHEAT FROM CANADA	)	731-TA-1019 (Preliminary)

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Friday,
October 4, 2002

Room No. 101
U.S. International
Trade Commission
500 E Street, S.W.
Washington, D.C.

The preliminary conference commenced, pursuant to Notice, at 9:30 a.m., at the United States International Trade Commission, LYNN FEATHERSTONE, Director of Investigations, presiding.

APPEARANCES:

On behalf of the International Trade Commission:

Staff:

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BOB CARPENTER, SUPERVISORY INVESTIGATOR
DONG JUN NA, INVESTIGATOR
MICHAEL DIEHL, ATTORNEY/ADVISOR
WILLIAM DEESE, ECONOMIST
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JOHN REEDER, COMMODITY-INDUSTRY ANALYST
WARREN PAYNE, INTERNATIONAL TRADE ANALYST

APPEARANCES: (cont'd.)

In Support of the Imposition of Antidumping and Countervailing Duties:

On behalf of North Dakota Wheat Commission; U.S. Durum Growers Association; Durum Growers Trade Action Committee:

NEAL FISHER, Administrator, North Dakota Wheat Commission
JIM PETERSON, Marketing Director, North Dakota Wheat Commission
ANDREW WECHSLER, Managing Director, LEGC, LLC
ANDREW SZAMOSSZEGI, Managing Consultant, LEGC, LLC

CHARLES A. HUNNICUTT, Esquire
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Washington, D.C.

In Opposition to the Imposition of Antidumping and Countervailing Duties:

On behalf of Canadian Wheat Board:

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RICHARD BOLTUCK, Charles River Associates, Inc.

EDWARD J. KRAULAND, Esquire
RICHARD O. CUNNINGHAM, Esquire
MATTHEW YEO, Esquire
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Washington, D.C.

On behalf of North American Millers' Association:

JIM BAIR, President, North American Millers' Association
RANDY MARTEN, Vice President, Miller Milling Co.
DAVID POTTER, Executive Vice President, American Italian Pasta Co.
JAMES MEYER, Executive Vice President, Italgrani, USA, Inc.
JOHN MILLER, President, Miller Milling Co.
GREG VIERS, Wheat Purchasing Manager, Barilla America, Inc.
GLEN ZEARFOSS, Vice President-Logistics, New World Pasta Co.

I N D E X

I N D E X

P R O C E E D I N G S

(9:30 a.m.)

MR. FEATHERSTONE: Good morning. Welcome to the United States International Trade Commission's conference in connection with the preliminary phase of countervailing duty and antidumping investigation Nos. 701-TA-430 and 731-TA-1019 concerning imports of durum and hard red spring wheat from Canada.

My name is Lynn Featherstone. I'm the Commission's Director of Investigations, and I'll preside at this conference. Among those present from the Commission staff are Bob Carpenter, the supervisory investigator; D.J. Na, the investigator; Mike Diehl, the attorney/advisor; Bill Deese, the economist; Chand Mehta, the accountant and auditor; John Reeder, the industry analyst; and we're joined also by Warren Payne from the Office of Industries as well.

The purpose of this conference is to allow you to present to the Commission through the staff your views with respect to the subject matter of the investigations in order to assist the Commission in determining whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury or that the establishment of an industry in the United States is materially retarded by reason of imports of the merchandise which is the subject of the investigations.

Individuals speaking in support of and in opposition to the petition have each been allocated one hour to present their views. Those in support of the petition will speak first.

The chair may ask questions of speakers either during or after their statements. However, no cross-examination by parties or questions to opposing speakers will be permitted. At the conclusion of the statements from both sides, each side will be given ten minutes to rebut any opposing statements, suggest issues on which the Commission should focus in analyzing data received during the course of the investigations and make concluding remarks.

This conference is being transcribed, and the transcript will be placed in the public record of the investigations. Accordingly, speakers are reminded not to refer in their remarks to business proprietary information and to speak directly into the microphones. Copies of the transcript may be ordered by filling out a form which is available from the stenographer. This proceeding is also being shown within the building on closed-circuit television.

You may submit documents or exhibits during the course of your presentations. However, we will not accept materials tendered as business proprietary. All information for which such treatment is requested should be submitted to

the Secretary in accordance with Commission Rule 201.6.

Any documents that are letter size and copiable will be accepted into the record as exhibits to the transcript. Other documents that you would like incorporated into the record should be submitted as or with your post-conference briefs.

Speakers will not be sworn in. However, you are reminded of the applicability of 18 USC 1001 to false or misleading statements and to the fact that the record of this proceeding may be subject to court review if there is an appeal. Finally, we ask that you state your name and affiliation for the record before beginning your presentations.

Are there any questions? If not, welcome, Mr. Cunningham. Mr. Hunnicutt. Please proceed. I was looking at Mr. Cunningham. I apologize.

MR. CUNNINGHAM: And welcome to you, Mr. Featherstone.

MR. HUNNICUTT: Mr. Featherstone and Mr. Cunningham, I'll take that as a compliment.

Good morning. My name is Charles Hunnicutt, and I'm counsel to the Petitioners in these investigations. We're here to tell you about the devastation that is occurring to the domestic durum and hard red spring wheat industries as a result of the flood of dumped and subsidized

imports of the subject merchandise from Canada.

With me this morning to testify on behalf of the Petitioners are Neal Fisher, a North Dakota wheat farmer and also administrator of the North Dakota Wheat Commission. With him is Jim Peterson, marketing director of the North Dakota Wheat Commission, who will be able to assist with any questions you may have. Petitioners' economic consultants present this morning to testify are Andrew Wechsler, managing director, LEGC, LLC, and Andrew Szamosszegi, managing consultant, LEGC, LLC.

The U.S. wheat farming industry is the most efficient in existence. It is not by accident that the United States came to be known as the breadbasket of the world. The northern plains are ideally suited to growing the wheat varieties that are the subject of this investigation, and our farmers have made the financial and personal commitments necessary to continue to feed us.

What is happening to our U.S. durum and hard red spring farmers? They're losing their shirts. Farm revenues are down even as costs continue to increase. The result is a sea of red ink that threatens the very existence of these industries. As a result, some farmers are abandoning wheat production and are leaving farming altogether. Why? Because of the unfair subject imports from Canada.

The subject imports and domestic production are

fungible. Market demand for durum and hard red spring wheat is inelastic and has been stable. Nevertheless, subject imports are up, subject import market shares are up. Simply stated, large volumes of dumped and subsidized subject imports have driven domestic market prices for durum and hard red spring wheat down to unsustainable levels.

The causal connection is clear. Canadian imports are causing present material injury to the domestic industries and threaten continued material injury to these industries. This is not a new set of industries to be before the Commission. The Commission has determined the impact of these unfair imports in the Section 22 and took several looks even earlier than that.

We have a strong affirmative case based on the traditional period of investigation, but these industries entered the period of investigation injured and vulnerable, and we should not lose sight of that fact.

Agriculture has been the foundation on which this country has grown for more than 200 years and remains a vital part of our society. Our farmers need to be treated fairly, and allowing these unfair Canadian wheat trade practices to continue would be a travesty.

With that, I'd like to turn our first substantive presentation over to Neal Fisher.

MR. FISHER: Good morning. My name is Neal

Fisher. My family and I have a farming and ranch operation in Kuter County, North Dakota. We raise cattle, spring wheat and other small grains there. I'm also the administrator of the North Dakota Wheat Commission, which is an entirely producer controlled organization that represents the majority of producers of U.S. hard red spring wheat. Our stakeholders also produce the majority of the durum wheat grown in the United States.

I'm here today because, at the recommendation of our U.S. Trade Representative, we have filed antidumping and countervailing duty petitions seeking relief for hard red spring wheat and durum farmers from the unfair trading practices of the Canadian Wheat Board. The economic injury to the U.S. hard red spring wheat and durum industries has been severe. Unless the subsidies of the Canadian Government and the dumping of the subject merchandise wheat from Canada are curtailed, our farmers face very real, imminent additional injury.

In 2001, our farmers produced 476 million bushels of hard red spring wheat. This is the aristocrat of wheat when it comes to making bread, particularly specialty products like yeast breads, hearth breads, croissants, bagels, frozen doughs, some pizza crusts. Ten year average production was somewhat higher at 525 million.

Lest you think that hard red winter wheat grown

primarily by the farmers in Kansas and the central plains states is substitutable with this spring wheat that we're talking about, consider the loaves of bread that we have before you here. On one hand we have this loaf of floppy, white, sliced bread. That's the cheap product made in the United States from hard red winter wheat. The price for that loaf of bread is around 99 cents.

The other two loaves we have here are what we call artisan breads. They're made from hard red spring wheat. The price for these loaves is $2.90 and $3.69 per loaf. You'd be hard-pressed to make this type of bread out of the hard red winter wheat that is the major ingredient in the loaf on the right-hand side here.

There are notable differences in the mixing and baking properties of hard red spring wheat that make it uniquely suited to crafting this type of premium product, but you shouldn't take my word for it. Take Pillsbury's. On their bag of Pillsbury's Best Bread Flour it says, "Made exclusively with hard red spring wheat, which is higher in protein and makes better bread." I'll put all of these items into your hands as the hearing progresses.

Durum is the other specialty wheat that we produce in our region and was addressed in the petitions. In 2001, U.S. production of durum wheat was 84 million bushels. Our ten year average in this case also was higher at 100 million

bushels. Durum wheat is used to make premium pasta products throughout the world.

As you know from the petitions, the U.S. and Canada are the world's largest wheat exporters. While Canada is a major wheat producer, the domestic market there is quite small. Thus, with a vast quantity of wheat available for export, Canada has become the acknowledged price setter in the world market.

This places the Canadian Wheat Board, which has total control over the export of the subject merchandise, in a unique position to inflict injury on its foreign competitors. Most of these competitors don't have any discipline or can't exercise discipline in the process in a meaningful way by exporting to Canada.

With this small home market in Canada, the main impact of the Canadian Wheat Board's actions are felt in the United States by our producers. The impact of Canadian subsidies and the Canadian Wheat Board's unfair pricing of hard red spring wheat and durum has been dramatic. These impacts include severely depressed prices, negative net acreage returns on hard red spring wheat and durum and a subsequent loss of those acres, which amounts to downsizing our industries.

In many cases, it has also resulted in the exodus of farmers from our primary industries, which is the

production of hard red spring and durum wheats. The interested parties in these investigations are particularly vulnerable to the Wheat Board practices because we produce exactly the same specialty wheats and compete for primarily the same markets as does the Canadian Wheat Board.

The wheat belt for hard red spring wheat and durum extends well into Canada and really doesn't recognize any geographic boundaries. Canadian and U.S. growers of hard red spring wheat grow identical products, and they face the same environmental production issues. The key difference is that Canadian farmers are forced to sell their wheat to the Canadian Wheat Board, which has a federal mandate not to maximize profits, but instead to sell and dispose of the grain that it has acquired by these means.

The Canadian Wheat Board is the world's largest single wheat exporting entity. Its market dominance is particularly apparent in the trade of durum wheat where it markets an average two-thirds of all global exports. This means the Canadian Wheat Board is not entirely a price taker in the durum market. Rather, the Board has a major effect on the prices through its decisions on how much to market at any given time.

As a result, farmers who produce the domestic like product are faced with competing with this entity, which receives considerable government subsidies and can unfairly

price the subject merchandise and in effect undersell our U.S. farmers. Given the small Canadian domestic market and the opportunities that are offered there, the majority of the subject merchandise is exported, much of it to the United States.

For most of the past decade, U.S. farmers have suffered significant injury. I've seen firsthand the injuries suffered by U.S. hard red spring wheat and durum farmers as a result of these unfair trading practices. The impact of the Board's unfair pricing and market practices has had a devastating effect on our farming economy and in our rural communities in our region.

The volume of subsidized imports being sold in our domestic market at less than fair value is very significant. Although the petitions provide the volume and value of imports, I will briefly summarize.

For the period of investigation beginning in 1999, imports of Canadian hard red spring wheat totaled 50.3 million bushels and rose to nearly 54 million bushels by 2001. This amounts to a seven percent increase. Historically, if we look back to 1995 imports of the subject merchandise have risen 64 percent, and since the implementation of the Canada-U.S. Free Trade Agreement in 1989 such imports have increased over 1,000 percent, virtually from nothing to the current levels.

Regarding durum for the period of investigation, in 1999 imports of Canadian durum totaled 15.6 million bushels and rose to 19.2 by the end of the period in 2001. That's a 23 percent increase. Historically for durum, since 1995 imports of the subject merchandise have jumped 170 percent. Since the implementation of the U.S.-Canada Free Trade Agreement, imports of durum have increased over 300 percent in that 13 year period.

These unfairly traded and subsidized imports are injuring U.S. producers of domestic like products. The injury goes much deeper than simply price depression, but I'd like to start there as a place to begin. The gross value of the hard red spring wheat production in North Dakota has declined by 32 percent from an average of $880 million in 1996 to 1998 down to $600 million during the period of investigation.

The situation is even worse for durum, with the value of North Dakota production declining from an average of over $300 million in 1996-1998 to a mere $179 million in the investigation period. That represents a 42 percent decline.

As the petitions further illustrate, the value of hard red spring wheat produced in 2001, the most recent data available, dropped $50 million in just one year from the period year levels. For durum, the value of production

dropped $35 million from the previous year in 2000.

Looking at it another way, average net returns per acre of hard red spring wheat after labor and management has raised from minus $18 an acre to a minus $25 per acre. These are based on records of a farm management group at North Dakota State University. Durum net losses have been minus $10 an acre to minus $17 per acre in that period. It's pretty easy to see that those persistent and increasingly negative returns are threatening the very existence and viability of the hard red spring wheat and durum production industries in the United States.

U.S. farm level prices for hard red spring and durum have been impacted negatively for the entire period since the United States-Canada Free Trade Agreement was implemented in 1989. Imports rose quickly in the years following, and absent a remedy such as the tariff rate quotas which were imposed in the mid 1990s, prices were kept at artificially low levels throughout that period.

This impact led to growing frustrations and the call for U.S. investigations into the issue. As you know, many of these investigations have been stymied by the Canadian Wheat Board's refusal to disclose any price information or sales information whatsoever.

However, the Section 22 investigation in the mid 1990s did reveal significant impacts on U.S. farm programs.

As a result of this action, tariff rate quotas were imposed. Immediately prices responded for both industries, both spring wheat and durum. Coincidentally, and in addition to the increased prices, planted acreage for both U.S. spring wheat and durum increased as well. Producers did respond to those price signals in that more normal market setting.

Unfortunately, the tariff rate quotas were only officially in place for one year and unofficially observed for one more year. As soon as they were lifted, prices began to decline and then went into a very steep fall as higher volumes of unfairly traded Canadian hard red and spring wheat and durum from Canada resumed.

This brings us to the present situation in which again prices have fallen well below the 25 year average for hard red spring wheat and durum. Prices began to fall very sharply in 1998 and 1999 and have continued to decline throughout this entire period of investigation.

If we want to look at this another way, we can review USDA data on average monthly prices during the period of investigation. That will show us that producers have been receiving about $1 to $1.50 a bushel less than the most recent ten year average. Even more alarming is a disruption in the traditional price relationship between these two commodities, hard red spring and durum wheat.

Let's look at Exhibit 1. While these two classes

of wheat make very different products -- I apologize for the size of the chart; it's a little small there -- they do compete for acreage in the eye of the producer. Because durum is riskier to produce, it has typically required a price premium to economically justify allocating your resources to durum versus the competing commodity, hard red spring wheat.

That premium has traditionally been in the range of 50 cents per bushel. However, an in-depth analysis of durum prices reveals that in 28 of the last 48 months, the premium for durum has been virtually non-existent. In fact, if you look at it more closely a discount has persisted throughout much of the period.

The result of that overall price depression for both spring wheat and durum is erosion of that normal allocation of resources to their production of these two classes of wheat. The phenomena is more apparent in durum because of the lack of the traditional price premium. It's a little bit on the small side, but I think you can see that the blue line is durum, and that has gone to a sharp discount over much of that period in question.

Unfortunately, the longstanding unresolved wheat trade problem with Canada has set the stage for a slow and painful erosion of U.S. wheat farming unless the subsidies and unfair pricing practices are stopped. This is evidenced

in many ways other than price depression. For example, acreage trends for hard red spring wheat and durum in North Dakota also demonstrate injury to the allocation of land and other resources in our industry.

Average hard red spring wheat acres in the most recent three year period are down from 17 to 29 percent compared to the levels achieved during the imposition of the tariff rate quotas in prior years. For durum wheat, acres are nearly 30 percent less than they were in the tariff rate quote period, so again it's more pronounced in durum.

In crop year 2002, North Dakota farmers seeded the fewest acres of wheat in nearly 20 years. Hard red spring wheat acreage was reduced to 6.9 million acres, which is a three percent decline from 2001. Durum acreage declined to 2.1 million acres, which is a five percent drop from that year before. Accompanying these declines is a decrease in the domestic market share held by U.S. farmers to less than 80 percent due to the relentless imports of Canadian wheat imports.

Depressed prices, declining plantings, diminishing value, shrinking U.S. market share have drastically affected the financial performance of U.S. farmers who produce the domestic like product. Simply stated, farm incomes have plummeted. As the petitions indicate, USDA's cost and return data also offer some insight, another way of looking

at this again, into the decline of wheat producer incomes from 1998 through the year 2000.

These are USDA numbers for the northern great plains region. The data indicates that returns declined to $21.94 in 2001 from $39.54 in 1998. That was before all costs were considered. When the value of unpaid labor, the opportunity cost of land and capital recovery costs are included in this equation, and these are regional numbers, not just North Dakota, the region's wheat farmers lost more than $76 per acre in the year 2000, the last year this data was available from USDA. I think that's a very significant number.

As a result of the list of injuries that I've recited, domestic farmers are unable to generate adequate capital to finance continued operations. There has been a further decline in production of the domestic like products as farmers either go out of business or switch to other crops that might be a little more profitable. Under these circumstances, the actual and potential negative effects on the development and production efforts of our farming industries are enormous. This goes beyond the basic farm unit or the farm entities that are so important in this whole equation.

In agriculture, factors affecting the cost of producing the commodity are very complex. High capital

investments are required in both land and machinery, and they often limit the ability of farmers to move in or out of the industry until prices become more profitable. This means that at times producers will actually grow crops that are not profitable at the moment since the capital costs involved are incurred whether or not you're producing a crop; the cost of operating the plant.

North Dakota durum and hard red spring wheat producers face especially daunting and limited economic options because of the geographic location and climatic conditions. The potential to switch to other crops is quite limited. The climate, soil, other environmental factors in the state are especially favorable, however, to these domestic like products that we've produced today.

North Dakota farmers do grow other grains and oilseeds, but in much smaller quantities. Even with the depressed prices caused by imports of the subject merchandise from Canada, wheat remains the state's dominant crop, and that's in terms of the total acreage harvested and the overall production. We have about 22 million acres that we can actively till in North Dakota, and roughly nine million of that is still in wheat today.

In short, North Dakota wheat farmers, faced with these low prices due to the Canadian Wheat Board's unfair pricing and other market prices, have little recourse in the

short run. The domestic wheat industries in question have suffered at the hands of the Board for years and are on the brink of disaster.

It's difficult for U.S. wheat farmers to continue producing a product that is too cheaply priced to cover break even costs. In the United States, the wheat industry's deterioration is dangerously close to the ultimate breaking point. That's the point where negative impacts quickly accelerate as mere base levels of production are no longer profitable to sustain the infrastructure.

This was the point I was making earlier. We have transportation and grain handling infrastructures that need volume. They need consistent sales and activity to maintain the facilities and efficiencies that they have built into the system. Once these capacities are gone or destroyed by unfair competition, it will be very, very difficult to bring them back into operation.

Tremendous start up costs that are nearly impossible to overcome characterize today's fiercely competitive global market environment. Later in this conference you might hear a famed claim that U.S. milling and pasta industries purchase Canadian supplies because U.S. producers don't produce enough. Well, such assertions are patently false.

Exhibit 2. In this illustration, and again I

apologize for the size of it, but the dark line that you see is total demand for the product. In this case, it's hard red spring wheat. You'll also note that the yellow portion of the bar graph is the production, and the inventories that are carried into the market year is the lower part. I'm colorblind, so I won't tell you what color that is, but suffice it to say it's dark.

The point is that the dark line for total demand is well below the upper line, which indicates the total supply. In the case of hard red spring wheat, those supplies have exceeded total use -- that's domestic and export demand -- by an average of 38 percent. I apologize. On the chart I think it says 138 percent, which would indicate that the supply is 138 percent of the demand. At any rate, it exceeds it by 38 percent or over 208 million bushels. That's over the last 15 years. Even absent the contested imports, U.S. supplies have exceeded demand in all of the last 15 years.

In the case of durum, and we need to go to Exhibit 3, supplies have exceeded total use by an average of 36 percent. We're making exactly the same comparisons here. By an average of 36 percent of 45 million bushels during the last 15 years. Again, without the contested imports U.S. supplies have still exceeded demand in all but three of the last 15 years.

Situations of tighter supplies often are the direct result of price and income suppression. This occurs in this case in periods of increased imports. Aided by subsidies and dumped in the market, imports from Canada remove substantial demand from the price equation and dramatically reduce the natural market signals and potential for upward trends in prices.

The scenario is dangerously close to becoming what we call a self-fulfilling prophecy. Let me explain a little bit what I mean about that. As producers, we watch our normal market situation. In the beginning of this phenomenon, we see the Canadian exports come in, depress prices. As producers observe this, they become less enthusiastic, should we say, about planting the crop so there is a downturn in acres and, therefore, somewhat of a downturn in production potential, given whatever weather we're dealt that year.

That can reduce the available supply, which then may, if you bring the cycle around again, justify in some people's minds the need to import additional quantities. As that happens, you further depress the industry. You further depress the acreage and the production potential, and we develop this downward spiral which we've come to call a self-fulfilling prophecy.

Left unchecked, obviously the milling industry's

false claim will become a reality. Ultimately under that scenario they may soon need to import their raw material from Canada because U.S. hard red spring wheat and durum producers and their industries will be decimated. Thank you for allowing me to take that little time to explain that.

Our farmers know full well that not every bushel, however, that they produce each year is top grade. Weather is always an unknown in the North American hard red spring wheat and durum production areas, both on our side of the border and in the Canadian areas.

Nonetheless, we do our best to insure that the varieties we plant, our crop inputs, including the fertilizers and all the other inputs, and the production and harvest practices we follow are aimed at producing quality wheats to meet the needs of our customers both domestic and worldwide.

Under normal market conditions, producers are rewarded for such diligence with premiums. When weather does not cooperate, a fairly traded market compensates farmers for the real planting and harvest risk that exists. Fair and open markets seek out and reward that highest quality, thus insuring that a more sufficient supply base is there in the following year. That's the only way to unravel that downward spiral.

Prior to the onslaught of Canadian durum and hard

red spring wheat imports to the United States, there was never a concern expressed by domestic millers and processors about sufficient supplies or quality. This is because they were all competing for the supplies at a fair and open price, and producers responded accordingly to the market signals that were in place.

Data on the physical characteristics of the wheat itself -- milling, dough mixing, baking and pasta processing, traits of the region's crops -- confirm sufficient supplies of high quality hard red spring and durum wheat year after year. If we follow the domestic millers' argument that they can only use the top grade or that portion of the crop which grades No. 1 each year, supplies of hard red spring wheat and durum have still surpassed domestic food use in all but one of the past 15 years. The only exception was in an extremely severe drought which occurred in 1988.

Certainly there are years that are tighter than others, but in the past two years supplies of the top grades -- not just No. 1, but the upper grades let's say -- have actually expanded. Of particular interest here is the fact that imports, on the other hand, have not declined during that corresponding time period.

Durum supplies have no doubt been tighter than that of those of hard red spring wheat, but again imports in

no way correlate with the tighter supplies of quality durums. It's very frustrating for U.S. farmers to experience a year like 1998, for example, when production of top quality durum Grade No. 1 and No. 2 was 179 percent of domestic mill needs, yet imports reached a record 20 million bushels and prices declined dramatically.

I think that's shown on your chart with the circle. 1998 expresses where it was one of the largest crops on record, and we still saw imports increase to a record 20 million bushels. That's the second time we look at Exhibit 3.

What happened in 1999-2000? Well, supplies in this example would appear tighter certainly, and yet the imports came down along with tighter supplies, so there's not necessarily a relationship here I don't think. Imports declined from the levels of 1998 only to surge again in 2000-2001. This is completely out of sync with production and supply availability.

It is, therefore, abundantly clear that the Canadian Wheat Board's unfair pricing practices drive imports, not the quantity or quality of the U.S. crop. Nonetheless, production is being compressed in the United States, but it is solely due to the selling practices of the Board, not the inefficiency on the part of the U.S. durum farmers.

We've repeatedly heard the excuses from the U.S. processors that they've purchased imported Canadian hard red spring wheat and durum for its quality. I think there's another story here, too. Data on imports from the U.S. Census Bureau clearly show that a majority of Canadian imports are actually not top quality. You need Exhibits 4 and 5 probably simultaneously here.

If processors were really trying to purchase Canadian supplies because they could not secure enough quality hard red spring wheat or durum from the U.S. harvest, it's not consistent that two-thirds of the spring wheat and half the durum that has come into this country during the last three years would be less than top grade. However, that appears to be the case.

It's clear the domestic supplies of both hard red spring and durum wheat have been more than adequate to cover our needs, but let's look back at this quality. When you look at the chart on the left here, we find that if you watch the color code there the imports of No. 1 are I believe it's a blue bar, the dark bar on the left. The imports of No. 2 are the larger bar, much larger bar, in the center. Of course, there's a smidgen there or small amount of the other, which would signify lower qualities, a very minor amount, on the right-hand side of each of those illustrations over the three year period.

If you move to the durum side, the chart on the right-hand side, you find that the blue bar there is the No. 1 grade durum with a very high hardened vitreous kernel count, which is another measure of quality. It's 85 percent and better. Over the three year period, about half of the durum that came into this country was of that upper quality break, but there's also a sizeable amount of material that classifies lower than that with lower levels of hardened vitreous kernels or a lower numerical grade, which make up those shorter bars. The point is that it's about 50/50 of the high quality versus some other quality that has come in.

It's clear I think that domestic supplies of both durum and spring wheat have been more than adequate to cover domestic needs, and it's not necessarily quality that drives this issue. The reason for the milling and pasta industry's opposition to these investigations is that they are continually receiving unfairly priced and marketed Canadian Wheat Board spring wheat and durum.

If a shortage truly existed in durum and spring wheat, prices most certainly would have responded to the signals of a market shortage. Since there was no such response for a period of nearly four years, there could not have been a shortage of either quantity or quality. Moreover, prices have remained artificially low due to the imports of Canadian wheat. This is not healthy economically

for U.S. consumers, U.S. workers, in addition to the loss it's creating across North Dakota in the farmers' enterprises in that region.

The injury to U.S. farmers is significant and longstanding. U.S. wheat farmers of the domestic like products are not asking, however, for any advantage. We simply want a level playing field, and we are insisting that the Canadian Wheat Board operate in a fully transparent manner, but, more importantly, under commercial terms in competition with other exporters of grain.

I thank you for the opportunity to testify at this morning's conference. Jim Peterson and I look forward to answering any questions which you may have.

MR. FEATHERSTONE: Thank you, Mr. Fisher. We'll accept your collection of five exhibits as Collective Conference Exhibit 1.

MR. WECHSLER: Good morning. For the record, my name is Andrew Wechsler, W-E-C-H-S-L-E-R, of LEGC, LLC. I am a professional economist and testify as such today. I'm going to go through a PowerPoint slide exhibit, which has been distributed to the staff and the audience, and comment as I do.

We have a decade of persistent unfair trading practices by the Canadian exporters of wheat to the United States, in particular the Canadian Wheat Board. The period

of investigation covers three crop years -- there's a correction there -- 1999-2000 through 2001-2002. We've submitted information on separate dumping margins for durum and for hard red spring wheat.

There is a significant array of subsidies created by the Government of Canada which both reflect and enforce the CWB's monopoly as a purchaser and seller and our key to transmitting these deleterious effects of dumping and subsidies to the U.S. market. A decade of persistent and large subsidies is in fact an important background point. We've been here many times over the last decade. This is not news to the Commission.

The fact is that we entered the period of investigation with the industry severely injured, and we ended even more severely injured. A slavish look at just trends over the period of investigation for looking at some sort of deepening correlation in those three years actually puts a burden on the petition that it shouldn't have because in fact the practices of the Respondents were as egregious, if not more egregious, at the beginning of the period than they have been at the end of the period. There's been injury throughout, and all of it is remediable under the law.

We've identified the subsidies. I'm not going to review them in detail now. The Section 332 investigation

confirmed these, much to the chagrin of Respondents. I'm just going to review one aspect of how these non-market, anti-market interventions by the Canadian Wheat Board and the Government of Canada. which backs it and has created it. affect the U.S. market. That is on Slide 4, the question of forward contracts.

The CWB's very structure as established by law and enforced on the farmers of Canada facilitates the non-commercial provision of forward contracts. If someone wants to find a forward contract for durum wheat, they have to go in effect to the Canadian Wheat Board because the Canadian Wheat Board has made it impossible for the market private provision of forward contracts in the U.S. market.

This is not an aspect differentiating them in the sense of product differentiation. The products are the same. The northern great plains don't stop at the parallel that separates Canada from the United States. The weather doesn't stop. The grain varieties don't suddenly change as you cross the border.

What does is the legal framework. The legal framework in Canada means that the only player in the U.S. market selling Canadian wheat is the Canadian Wheat Board. If a Canadian farmer wants to sell his wheat anywhere, he has to sell it the Canadian Wheat Board unless he's willing to devalue it as feed grain for cattle.

In a free market, forward contracts must charge to cover acquisition risk, pricing risk, that is that the market price may change between the execution of the contract and the fulfillment of contract and storage costs if the wheat is actually retained and stored by the person providing forward contract.

By design, the CWB faces none of these. Western Canadian farmers can only sell through the CWB. They must hold the grain until the Board asks for it. They can't sell it elsewhere in the interim. Thus, there's no risk on the sales side and no risk on the pricing side for the CWB. They simply sell it and give the Canadian farmers the change left over after their marketing expenses and, for that fact, illegal expenses of defending their practices in proceedings such as these.

Dumped and subsidized sales transmit these non-market features to the U.S. market. U.S. wheat faces the full market cost of forward contracts, and in durum this means there's simply no functioning future contract. It's a major disadvantage created by the subsidized and dumped framework within which the Canadian Wheat Board sells its wheat in this market.

The Canadian Wheat Board does not respond to market forces. It creates them. The CWB essentially proclaims in its own literature, selling its services in its

public relations material to Canadian wheat farmers, that it has market power. This is not in dispute. What it doesn't admit in the same breath is that this means it's a price maker and not a price taker. Its mere presence in the U.S. market alters U.S. supply and pricing, and that is a dumped subsidized presence.

One need not look for a dime's worth of underselling in this market. You have commodity goods, and the presence of additional dumped subsidized supply ipso facto depresses conditions for free market competitors in the United States. CWB has not been driven by changes in U.S. supply and demand as they claimed in the 332. Canadian exports to the United States have not been driven by higher prices. We submit in a straightforward econometric analysis this in the petition at I-47, and I think that really dispenses with that claim completely.

There has been a large rise in imports over the POI, though none need have been shown to bear our burden of demonstrating material injury. As Slides 7 and 8 demonstrate, spring wheat imports from Canada are up 7.6 percent, and durum wheat imports are up 23.3 percent over the three year POI. For a commodity such as wheat, these increases are clearly significant.

Let's turn to Slide 9. There is a large and growing Canadian market share. U.S. consumption has been

stable and prices low, but Canadian Wheat Board sales have risen, as is demonstrated in Slide 10. As Slide 11 indicates, Canadian durum share of U.S. mill grind consumption rose from 25 percent to 29 percent over the POI. Canadian spring wheat share of U.S. hard red spring food use rose from 20 to 22 percent over the same period.

The context for this and the result of this has been depressed U.S. prices. For hard red spring, prices have remained low throughout the period of investigation. The hard red spring protein premium has all but disappeared as various protein hard red spring wheats have seen their prices compressed to a very narrow band.

In durum, prices have remained depressed, too. Both the cash and futures market at the Minnesota Grain Exchange for durum have seen very little activity. Even now with recent price increases due to drought in the last few months, prices remain exceedingly low. Past droughts have usually led to much, much higher priced spikes.

Despite poor supply products, durum prices remain well below their historical average. In fact, we've calculated over the entire period for which consistent data are available, which is 20 years in the case of durum and 22 years in the case of hard red spring. For hard red spring, they are only slightly above the long-term average despite the drought.

If you want to see the protein premium compression, that's shown dramatically in Slide 14 for hard red spring wheat. What have been traditional premium for higher protein spring wheat and also for durum have been compressed to almost insignificant differences over the last one to two crop years.

Taking inflation into account, even with higher prices returns remain exceedingly poor. Real prices of both durum and hard red spring remain depressed. As of this August, 2002, durum prices were 14 percent lower than their long-term average, and hard red spring prices were eight percent lower than their long-term average.

Acreage trends further indicate industry, and acreage in agriculture is important to consider both under the rubric of capacity and capacity utilization, which are terms that are more akin to industrial production. Long depressed durum prices have all but eliminated the durum premiums as we've just seen. Durum is riskier to grow. The diminished premium has led to a dramatic decline in durum acreage. During the POI, just three years, durum acreage declined by 30 percent nationwide and 38 percent in its heartland of North Dakota alone.

Hard red spring acreage has been flat, but this is also an indicator of injury. Many disappointed durum growers shifted to hard red spring because it's a less risky

crop and has somewhat higher yields. Even so, current HRS acreage, about 15 million acres, is still about two to four million acres below 1992 to 1997 levels. Hard red spring's economic performance remains, as we shall see, exceedingly unattractive, too.

Income per acre is down over the period of investigation. In the northern great plains, as Slide 19 demonstrates for all wheat, and I'm just restricting this to the U.S. portion of the northern great plains, per acre revenue less operating costs declined by 40 percent from 1999 to 2001. When all costs are considered, growers lost money in all three years of the POI, and the losses grew in every year. North Dakota data restricted to just durum separately from HRS production indicates similar trends.

Slides 20 and 21 portray the dramatic collapse in net returns per acres for durum and spring wheat respectively. While 21 is labeled spring wheat, since it's only for North Dakota it really is hard red spring since that's just about all the spring wheat they grow there.

U.S. durum and hard red spring wheat farmers are materially injured. The pricing is depressed over the entire POI. The acreage has been declining in durum. The acreage in hard red spring is depressed. Wheat farmer income declined over the POI as both USDA and North Dakota State University cost and return data confirmed. Taking all

costs, total costs, into account, U.S. durum and HRS producers are an endangered species. Endangered species.

The Canadian Wheat Board and Canadian wheat that sends to the United States are the cause of material injury to U.S. wheat growers. U.S. and Canadian wheats are highly substitutable. The plains don't change at the border. The language doesn't change at the border except when it refers to a title put on a variety of wheat. The only thing that does change at the border are the subsidies and the legislative structure in which the Canadian Wheat Board has been created as the largest single seller of wheat in the world.

The owned price elasticity of demand for milling wheat is extremely low. The impact of that is that lower prices do not create much more demand. In that sense, if you're looking at the elasticities framework and a commodity framework you're looking at an agricultural equivalent of, I must say with all due respect to opposing counsel, cement.

Thus, the presence and increase of unfair imports from Canada depresses U.S. prices and output below levels that would otherwise prevail absent the subsidies and dumping that benefit the presence of Canadian wheat in the U.S. market.

In closing, I want to note that the North Dakota Wheat Producers went shopping and provided the bread for

this hearing. For the baloney, you'll have to wait until a little later. Thank you very much.

MR. HUNNICUTT: Mr. Featherstone, that concludes Petitioners' testimony.

MR. FEATHERSTONE: Thank you, Mr. Hunnicutt.

Mr. Wechsler, we'll accept your collection of slides as Collective Conference Exhibit 2.

Mr. Na?

MR. NA: D.J. Na with the Office of Investigations. Thanks for your testimony. I just have several questions I'd like to ask. I'll start with the very basics.

The market year, I understand, is June through May. I want to ask you if that's the same throughout the United States for all states?

MR. FISHER: Mr. Na, that is correct. The wheat marketing year runs from June 1 through May 31. It differs from commodity to commodity, but the wheat marketing year runs in that manner.

MR. NA: Okay. Is that the same thing as the crop year?

MR. FISHER: In this case it would be, yes.

MR. NA: In the petition, Mr. Hunnicutt, you've listed a number of farms that produce hard red spring wheat. We would like in your post-conference brief if you would

include the states that only grow hard red spring wheat. We would appreciate that. I understand from looking at the USDA data that that's not readily available.

MR. HUNNICUTT: Mr. Na, we will certainly provide that. We have been working to sort out the states where there is some production of both. I think Idaho was where we were working on that. We will do that for the post-hearing submission.

MR. NA: Mr. Fisher, in your testimony you mentioned a number of data concerning U.S. production and other factors. The data you've mentioned regarding U.S. employment and labor, I was wondering what source you used to gather that data and if that would be available to the Commission.

MR. FISHER: Mr. Na, I believe the information you're referring to was I was looking at USDA data that reflected relative income levels, and there was a reference in there to cost of labor and capital and land. That is USDA data. We can make that available.

MR. NA: Do you have any data regarding U.S. employment by wheat or even specifically HRS/durum?

MR. FISHER: We would be able to generally look at the number of existing farm units again from USDA data. That may be as clear as we could make that, but that is available, the number of farms and farmers that make their

living from agriculture, and broken down into wheat and other commodities is recorded at USDA certainly.

MR. NA: I understand that is available through USDA, but I was wondering if there was other data that your organization might have collected on your own that represents U.S. data.

MR. FISHER: Typically we do not, but there are statistical services that run surveys and so on. Another division of USDA, the Ag Statistics Service, does some of that kind of work. Also, there are farm management groups, for example.

There's another one that's cited in the testimony from North Dakota State University that has a sample of producers in the region primarily in the State of North Dakota, and there are financial records kept for those individuals. I don't know how much of that is proprietary under that system, but that is one of the sources that we use for some of the generic information regarding specific North Dakota production, income levels and so on.

MR. NA: Getting more to the wheat, you mentioned there were a number of quality differences. I guess other than price and protein, is there a single quality that stands out as the primary difference among all the different types of wheat?

MR. FISHER: There certainly are quality

parameters that are associated with each of the individual classes of wheat. For example, there are six classes of wheat in the United States. There are quality parameters that are directly associated in the industry with hard red spring wheat, for example, and with durum. There are unique properties that extend themselves well to the products that are produced.

There is literature available in describing those traits and the quality factors that are associated. Some of that is somewhat general. If you go into the science lab, into the cereal quality labs, and measure other performance characteristics of the various classes of wheat, there would be very distinct differences that are immediately apparent to those who mill and process wheat and grow it, for that matter.

MR. NA: Okay. If we were to take it from a customer perspective, what would a customer for durum and/or HRS wheat primarily look for?

MR. FISHER: In answer to that question, in most years I would say that the hard red spring wheat, for example, the primary factor that is sought by a purchaser or processor of hard red spring wheat is the protein content and the quality of that protein or the gluten and performance characteristics associated with it.

In the market, some of these traits are more

easily measured than others. Protein level is one that has been relatively easily measured for some years now with infrared technology, so that is a market factor and a performance factor or an indicator performance factor that is one of the singular most important.

There are other factors in terms of the test weight which relates to mill yield, other factors that indicate performance, but I think the single largest quality factor in spring wheat as a traded item certainly is the protein.

In the case of durum, here again it's a very unique wheat. It's the raw material specifically for high quality durum products. In this case, mill yield, you know, is associated with several factors; not only the test weight, but also what we call the hardened vitreous kernel count. That was illustrated in one of the exhibits as one of the factors, and I think those are the characteristics.

Color, as a producer or a processor or market would refer to it as, and the test weight and overall grade would be the top characteristics of durum.

MR. NA: You brought the two different types of loaves of bread today.

MR. FISHER: Yes, sir.

MR. NA: And they indicate the price differences between HRW and HRS?

MR. FISHER: That's correct.

MR. NA: Was that the primary intention of that?

MR. FISHER: The idea in this illustration is that these premium bread products are very high protein, strong gluten property, of the hard red spring wheat to carry the other additional materials that are in this, those that are more health related, the bran and the other factors that are more prevalent in the upscale breads that are available today.

The white pan bread that is sort of the underlying general commodity, if you will, in the bread industry today is made with primarily hard red winter wheat. It was an illustration of the two quality levels and the relative carrying capacity and, therefore, the price of the two commodities.

MR. WECHSLER: Excuse me. If I could just add a point of clarification? The breads were provided to differentiate hard red spring subject wheat from other wheats that go into cheaper breads.

The differentiation between hard red spring and subject durum wheat, the two subject wheats before the Commission, is quite a bit more dramatic than that. You'd need a box of pasta on the table to demonstrate the durum.

MR. NA: Okay. Is HRS and HRW always used exclusively?

MR. FISHER: No. No. In the mill grists of the mills across the country there are blends used in the production of pan bread in the country. The spring wheat is typically the premium wheat. It is the strengthener of the other wheats in this country and throughout the world. That's the reason we sell spring wheat in 104 countries every year.

MR. NA: How is that blend determined?

MR. FISHER: Generally on the carrying capacity of the indigenous wheat in a given market. For example, in a Kansas City mill the spring wheat is used to strengthen the other wheats and make it possible to make the product that is desired.

MR. NA: Is there a certain type of approximate percentage you would associate with the blend in terms of HRS and HRW?

MR. FISHER: I think that's going to vary greatly from year to year. I'm not qualified to supply you with that information at this time. If we can shed some more light on it later on, we surely will.

Jim?

MR. PETERSON: Just one more general comment on that. When we talk about protein quality, the benefits that come from that are things like absorption, loaf volume, which absorption has direct correlation to a shelf life.

You know, these breads have a denser texture to them, the multi-grain breads, which need a stronger gluten to uphold the volume.

I think in terms of mill grists, when they're using hard red spring and hard red winter it's more of a complementary effect. I mean, the demand pull for hard red spring is to enhance or improve the hard red winter wheat flour. Certainly, you know, if you've got a flour customer that has a specific absorption requirement on its flour and he can't get it from 100 percent hard red winter wheat the amount of spring wheat put in is going to be enough to get that absorption level up to the flour miller's or, excuse me, the baker's requirement.

MR. HUNNICUTT: Mr. Na, if I could just add? The way I have understood this is that the hard red spring wheat is used to make specialty products as hard red spring wheat, and then it's also a specialty wheat in terms of when it's used in a blend.

The determination of the nature of that blend depends on the product used and the characteristics of the major wheat, hard red winter normally, that they're using to blend to make the product from, but hard red spring remains the specialty wheat that's introduced to the blend to get the final characteristics that are needed.

MR. WECHSLER: The tradeoff between is not -- is

not -- what you see in the soft drink industry between cane sugar and high fructose corn syrup, which is a price based tradeoff. Here the end characteristics of the product being produced determine backwards what the characteristics of the dough have to be, and the limitations of the cheaper wheats make one have to introduce the higher quality/higher protein wheats to alter that average characteristic of the dough.

MR. NA: I understand that there are quality differences between HRS and HRW. There is also a price difference between HRS and HRW. In terms of HRS, would the customer try to get as much of the HRS or as little of the HRS as possible to fulfill its protein or gluten requirements and then make the rest of their blend up by using HRW to get the price advantage?

MR. FISHER: Essentially I think what you've said could be construed as correct as long as the customer in the end is satisfied. That's what the miller is really looking at is to satisfy that customer and, of course, keep his costs in line as much as he can.

MR. NA: Approximately what percentage of HRS use is used in blends, as opposed to exclusively being used on its own? Do you know?

MR. FISHER: I think we'd have to do some more research on that. Certainly there are these specialty breads which are more exclusively or this kind of bread

that's made, as it says on the label, this kind of flour is made exclusively from spring wheat. I think that's going to vary somewhat from year to year, but there would be industry statistics.

Even if you looked at the USDA data to see how much hard red winter wheat is used domestically or if you looked at the actual mill usage versus feed usage of that class of wheat and then looked at the mill grind of spring wheat, you could work out a rough estimate from that basis.

MR. NA: Okay. With the domestic product, do customers ever base their purchasing decision on the source of the wheat? If it happened to be the same grade and same type, would the customer buy because it's from Canada?

MR. FISHER: I guess I don't know whether they would or not. I think, you know, as long as the product is available here distance is longer.

MR. NA: Okay. Mr. Wechsler, you mentioned the ability of U.S. producers to shift production between the different types of wheat. Is there a cost difference to producing the different types of wheat?

MR. WECHSLER: Neal? I think Neal would be better able to answer that.

MR. FISHER: The inherent production costs themselves are somewhat similar. We're talking about in many instances some of the same land area, although not

exclusively in our area. It would be easier for a durum producer to shift into spring wheat than a spring wheat producer to shift to durum.

In many instances seed costs will be somewhat higher than durum, but the real difference is the inherent risk in growing it. Weather factors are more critical in loss or potential loss of quality factors. Durum typically yields somewhat less. If you look at the longer term trends, it yields somewhat less than the spring wheat.

I guess those are probably the primary factors. We're talking about obviously a similar geographic location, but our production area has shifted around the state a bit due to economic pressures.

MR. NA: In your testimony you elaborate on the market prices of the different types of wheat. I was wondering if you could comment and elaborate on national or state price floors that may be in effect if they exist.

MR. FISHER: I would say there certainly is no price floor. As you know, there are government programs that have some influence certainly on production and pricing, but these have been ineffective in terms of a price floor certainly because we've seen values all over the board to the down side in particular in recent years.

MR. NA: What are these programs that you're referring to?

MR. FISHER: The USDA Farm Service Agency has prices that provide basic loan rates, for example, which in North Dakota on average would be $2.58 per bushel. There are quality requirements involved in that, but that's the generic price in a loan value.

If you do not have those quality factors it becomes more of a recourse loan, but that certainly has not acted as a price floor in recent years. I think maybe 20 or 25 years ago it may have to some extent as there were more mechanisms for reserve programs and these kinds of things. The government has basically gotten out of the business of storing grain.

MR. PETERSON: As Mr. Fisher was saying, in the new loan program in the U.S. farmers endure as much risk under that program as they do in the market. The loan is simply a nine month, you know, government loan. It has to be paid back.

If the farmer, you know, messes up on marketing and, you know, market prices have kind of -- you know, there's a loan deficiency payment, a difference between the loan and market prices, that they can take as well. If they don't make the right marketing decisions, there's no guarantee that he's going to get that $2.50 a bushel. I mean, there are a lot of producers, and they only get $2.20 a bushel because they made the wrong marketing decisions or,

you know, poor timing.

In this case, we feel with a lot of the continued price pressure from Canadian imports in theory that loan is not holding prices at a floor level.

MR. NA: And how do these loans and loan programs tie in with subsidies?

MR. HUNNICUTT: Not at all. These are unrelated to a subsidy. I think what you're hearing from Mr. Fisher and Mr. Peterson is that the loan program as it is currently constituted leaves the grower completely at risk to the market, both on the up side and the down side.

They're marketing loans for a particular period of time, but it doesn't guarantee that price to the grower so there's no subsidy involved.

MR. NA: Can you elaborate on any subsidies that are involved with wheat farmers and how they receive them? For instance, if the market price of wheat falls below a certain price, will a subsidy recover the cost or, rather, the difference?

MR. FISHER: The loan program is set up such that if prices fall to absolutely disastrous levels below the loan rate there has been what they have called the loan deficiency payment, and that has come into play in some years in the past. It has not been just recently.

MR. NA: Is it true that the ending stock of the

various types of wheat are purchased by the government, by USDA rather?

MR. FISHER: Generally, as I mentioned, the USDA Farm Service Agency has gotten out of the business of either grain ownership or marketing and so there really is no -- at one time many years ago there was a program for loan forfeitures, and they took some grain under ownership so in the Ending Stocks column there was something called Free Stocks and Commodity Credit Stocks. That's almost nonexistent. There is some small food reserve that I think even that has been tapped, so it's not a consideration here in recent years.

MR. NA: One last issue I wanted to ask you was about the demand for the different types of wheat. I understand it looks like from the graphs that were presented the demand changes from year to year. Can you elaborate on that on why demand has changed so much? I understand wheat is being used for breads and pasta and such.

MR. FISHER: Well, certainly demand is affected by a lot of international factors. We sell spring wheat in over 100 countries, but the largest market is right here in the United States.

Demand varies on the basis of other factors in other countries. Europe has become a dramatically important and increasing market for U.S. spring wheat and for durum in

recent years. These are very discerning, high quality markets. As they recognize the traits of U.S. hard red spring wheat and durum, the positives in the quality traits, they have taken larger quantities. The same is true in Asia. That's one of the factors that has influenced demand.

Growth in the wheat and wheat foods products in the U.S. food industry, consumption patterns emphasizing more consumption of bread products like these, pasta products and so on, has also caused some increase in demand in the two classes of wheat. Over the long haul we have periods when it's not showing great demand increases, and it's actually flat in some instances, but those are the factors that cause change.

MR. NA: Thank you. Those are the questions I have for now.

MR. FEATHERSTONE: Mr. Diehl?

MR. DIEHL: Good morning. Thank you for traveling to Washington to testify. Thank you to those from Washington, too.

Let me just start with some general questions. The petition indicated that the vitreous kernel content influences the pricing of durum wheat. Does that have anything to do with the pricing of hard red spring wheat?

MR. FISHER: Yes, it does. It involves the subclass actually of dark northern spring or northern spring

wheat. In the case of durum, it would be hard amber or amber durum wheat, for example, as a couple of the breaks in the levels of hardened vitreous kernel count.

Yes, it is a factor in hard red spring wheat as well. In Asian markets, many of them refer to it as universally hard red spring wheat and dark northern spring wheat almost universally signifying that higher break in the vitreous kernel count.

MR. DIEHL: Because the petition gave more influence in terms of durum than it did to hard red spring wheat, so if I could focus you on sales in the United States? Is it an important factor in pricing for hard red spring in the United States?

MR. FISHER: I would say yes, but the durum, as you have pointed out, in durum it's probably a more critical factor.

MR. DIEHL: Okay. There are very many helpful exhibits attached to the petition, and I had some questions about things that I read in those.

I don't remember what year it was, but one of the exhibits says that there were some problems in North Dakota with I think it was fusarium, which I guess is a disease that occurs with wheat. Could you elaborate on that?

MR. FISHER: Certainly, Mr. Diehl. The reference to fusarium is to a fungal disease that has plagued North

American wheat and other grain production areas of North America for some years now. It does result in both yield and quality loss and has been a rather significant factor in some instances in some years over the last decade in both Canada and the United States.

MR. DIEHL: What years has it been important?

MR. FISHER: Jim, I might refer to you on that.

MR. PETERSON: Yes. I guess we may have to, you know, do some detailed research on that to look at what years may have been higher than the other, but in general, you know, in 1993 with a lot of the floods in Iowa, a lot of the wet conditions in the northern plains, that was kind of a watershed year in terms of, you know, some of the impact from the fusarium fungus.

It does tend to move throughout the region year to year, depending on weather conditions. You know, in some years parts of Canada have it more severe than North Dakota does. Some years it's been, you know, more acute in the eastern part of the state and then moves more northern. A lot of it depends on growing season conditions.

Like I said, in terms of loss to our hard red spring and durum industries, you know, 1993 was kind of a high mark year. I'll get you the detailed years in a post-hearing submission. You know, 1997 was another year where it was relatively high.

MR. DIEHL: Okay. Thank you. I guess another factor affecting the market are droughts. Can you tell me in the last five years which have been sort of drought years and which have not been and also comment on severity?

MR. FISHER: In the past five years, we have not experienced drought conditions in North Dakota. Some of the surrounding states have, however, in other parts of the region, other parts of the country and other parts of the Canadian prairie, but in North Dakota we in the last five years have not been affected. The last drought that we really experienced was in 1988 when it was quite severe.

MR. DIEHL: Okay.

MR. HUNNICUTT: Mr. Diehl, if I might add?

MR. DIEHL: Yes?

MR. HUNNICUTT: We would actually like to go back and in a post-hearing submission send you some more analysis on the 1988 drought because we think that it is relevant in terms of analyzing the impact that a drought had in a market condition as compared to any particular impact from current droughts that may be occurring.

MR. DIEHL: I thought I gathered from the petition that there's a drought either developing now or causing price increases now. Is that the case?

MR. FISHER: The conditions in the southern portion of North Dakota and in South Dakota and all through

the southern plains states of Kansas, Nebraska, there have been drought conditions in the 2002 season in that region, and it's been a topic of news certainly in the hard red winter states in the central plains states of the U.S.

MR. DIEHL: Okay. And one of the effects of drought is to raise the protein content in wheat? Is that correct?

MR. FISHER: Yes, that is correct. The added stress on the plant tends to force more of the nitrogen component of the inputs into the kernel, and performance, generally speaking, tends to increase even though the output is down.

MR. DIEHL: How much can protein output vary as a function of drought? I mean, one percentage point or two? Can you quantify it?

MR. FISHER: That might be a good illustration that you've just quoted. I do have a chart that we can make available, and you can pick out the drought years in either the hard red winter wheat production area or our own by the pattern of the protein levels.

For example, in Kansas most of the time the protein level is around 12.4 or 12.5 percent on a long-term basis. In 1988 or 1989, they shared that drought. The protein level shot up a point or point and a half. In the case of North Dakota in 1988, that's one of the high water

marks there, too. Again, a point or point and a half is surely in the neighborhood, and it can go under severe conditions maybe as high as two points.

We have around a 14.3 protein level in the North Dakota crop or the regional crop there each year. In a drought year you might see it in excess of 15 protein on the average.

MR. DIEHL: What about with hard red winter?

MR. FISHER: In hard red winter that was the example I cited earlier. In Kansas they run about a 12.4, and you may see it in the 13s, light 13s, in those drought years like 1989. This year I suspect they would have returned to levels like that as well potentially.

MR. DIEHL: Okay. Let me turn to Mr. Hunnicutt. Going with some legal questions, is your theory that we should find two different like products in this case, one for durum and one for hard red spring?

MR. HUNNICUTT: Yes, that's correct.

MR. DIEHL: Okay. Something that I think should be addressed is the difficulty or ease of an individual producer shifting between those two products. That's one of the factors that we typically examine.

I'm thinking about the case. If you have two like products and two different industries, I think the Commissioners might like to consider the fact that a

producer can jump from one industry to the other simply by sowing a different seed. I think that's something that would behoove both sides to address.

MR. HUNNICUTT: Yes. There is some potential for product shifting at the production level, and we'll address that for you.

MR. DIEHL: Okay. Thank you. The attachments also indicated that the protein premium for hard red spring fluctuates, and it indicates that part of that depends on the hard red winter that's going to be blended with the hard red spring. If Mr. Fisher or Mr. Peterson can elaborate on that?

The gist that I take from that is that in years when hard red winter protein is lower there's a greater protein premium from the hard red spring. When the hard red winter protein is higher, then the premium on hard red spring goes down. Is that more or less what I should be taking from these exhibits?

MR. FISHER: Essentially, Mr. Diehl, your analysis is correct. There also is a factor of availability. In a year when there are shorter supplies of hard red winter wheat that may affect it as well, but, generally speaking, the average elevator manager or producer in North Dakota is going to know that the protein level in the hard red winter wheat crop has certainly something to do, and it may be a

fairly major factor, in establishing his protein level.

Now, that's not to say that the level of the spring what crop is not involved or competing sources certainly, but the hard red winter wheat protein level is one of the anchor points for the protein premium scale.

MR. DIEHL: Okay. Mr. Peterson?

MR. PETERSON: Mr. Diehl, just one more thing to add on that in terms of, you know, protein quantity levels, but there's also been a number of, you know, cereal science studies on the protein quality differences.

In terms of having some price impact, there is not, you know, a full equivalent proteins of hard red winter, and really there's only one level where they're kind of comparable historically at that 13 percent. There is still some inherent quality benefits that hard red spring creates.

Part of it is environment, probably a little bit of varietal impact like absorption, you know, mixing strength, gluten qualities. You know, you need more than just the protein quantity.

MR. DIEHL: Okay. Thank you. In Exhibit 113 at page 13 there's a reference to *Agricultural Outlook* from August of 1997, and it indicates that wheat classes can often be substituted for each other. I would appreciate if

you could attach that to your post-hearing brief.

In particular, I'd like to examine it for relevance as to the like product question. That would be whether hard red winter should also be part of the like product in addition to hard red spring. That I think is an issue I'd like both parties to address.

MR. HUNNICUTT: We'll be glad to address that.

MR. DIEHL: Thank you. Something relevant to that is something I found in Exhibit 138, which was an analysis, an estimate of price reductions for U.S. wheat as a result of Canadian imports. That estimated much higher price effects for durum than for hard red spring on the basis that for hard red spring there is greater substitutability. I think that's something that it would behoove you to address in your analysis for both sides.

Let me change subjects a little bit. Mr. Wechsler, you talked about you didn't want to go through all the subsidies, but you said one of the effects of the Canadian Wheat Board was that it effectively, if I understood you, pushed U.S. producers out of the ability to make future contracts.

Can you explain? If the Commission accepts that as correct, how should that be relevant to the Commission's analysis? Would that fit under a volume analysis? Price? A different economic factor that the Commission should

consider?

MR. WECHSLER: I think it goes to explaining in some detail the causation linkages. The information that's been provided to Commerce relevant to that issue goes to the existence of a subsidy and perhaps how to quantify it, although it's very difficult to do so.

In the ITC context, the impact of the way in which the Board is set up and operates and has a legalized monopoly framework creates the basis for it offering future sales at non-commercial rates, so that's a reflection of the non-market way in which the Board has established.

Now, why I think that's helpful in the analysis here is you're going to be seeing pricing information to the extent, and we didn't stay up all night. We do our detailed data analysis during daylight hours, so we haven't yet tried to analyze all the pricing data that has come in, but one of the problems with price comparison data of the typical underselling variety the Commission has done in the past when it comes to this case is adjusting for quality differences, protein differences and also in this case adjusting for differences between what are future contract prices and are essentially the much more close spot prices under which most of the domestic crop is sold.

What I think is useful in cutting through that difficulty is understanding that when something is sold on a

long-term contract, even if you go forward to the date at which the delivery is made and you compare the prices, you're not comparing apples to apples because the fact is the bet has already been placed so you're looking at one case in which a risk was undertaken and a service provided compared to a spot price of another kind.

Whether or not there's underselling there doesn't necessarily tell you a whole lot unless it's the Canadians underselling the U.S. because one would think that you'd have to pay a higher price for that service. The reverse, if there's some overselling, doesn't tell you what the effect is, but what we do know is that people go to the Canadian Wheat Board for long-term contracts, and they can't get them from domestic producers so it has a value in the market.

If it had a value in the market and the market was operating properly, those future contracts would be also offered and available to U.S. producers. Their absence, the lack of liquidity as it's worded delicately by the Minneapolis Grain Exchange on the board of which sits the CWB, that lack of liquidity is testimony to the way in which the CWB injures wheat sales in the United States because customers want that and millers want that, and they have a right to get it, but they can't get it when one side is offering it free or at subsidized premiums, meaning not

sufficient to cover the market cost. The other side can't offer it at all.

That's really the focus. I'm not asking you to do a Commerce subsidy analysis.

MR. DIEHL: Right.

MR. WECHSLER: This is a pricing advantage they have by reason of their entry in the U.S., and the mechanism for transmitting that pricing advantage is obviously the dumped and subsidized sales, which are the subject of the case.

MR. DIEHL: Okay. Thank you. Mr. Peterson, changing subjects again, the petition indicates that I think it's about half of hard red spring and a third of U.S. durum is exported. Could you comment on the profile of what's exported compared to the profile of what's sold in the United States?

MR. PETERSON: Yes, Mr. Diehl. If we would look at, you know, some of our export charts, you would see our core markets for hard red spring wheat are Asia and Europe. You know, Japan is by far the largest buyer of hard red spring wheat. They buy a higher protein level. They're a very quality conscious market. They're consistent buyers year in and year out. It's similar grades to what is purchased in the U.S. domestic market.

We've actually seen increasing growth in the

European export market for hard red spring. It's not for, you know, hard red winter. You know, they need the hard red spring for the gluten attribute that it provides, the strength and for blending with local wheats. There again too, a very similar specification in terms of protein grade limits and, you know, a number of other factors that could be added to contract specifications.

For durum --

MR. DIEHL: If I could just stop you there? You've told me about Japan and Europe, but compare those exports compared to what's selling in the United States. Are we sending more Grade 1 overseas or keeping more of it here? If you could just comment on that?

MR. PETERSON: Relative to just comparing the two markets?

MR. DIEHL: Yes. If you just compare hard red spring sold in the U.S. and hard red spring exported, what differences, if any, are we going to see?

MR. PETERSON: They would be very similar, I mean, in terms of grade specifications, in terms of, you know, if there's a higher test weight spec. I mean, in some cases we're actually seeing some foreign buyers put on, you know, some tighter quality demands, so we've seen, you know, very similar quality demands from overseas customers.

MR. DIEHL: So, for example, we would sell the

lower grades both in the United States and exported?

MR. PETERSON: Yes. In some cases, you know, the extremely low cases, like we have a Grade 1, 2, there's 3 Grade, and 4 and 5. Some of the lower grades are traditionally, you know, discounted enough in the market that they're competitive with some of the feed values, so we do see some of that working down into the feed channels, but in terms of --

MR. DIEHL: Can that be exported as well, the Grades 4 and 5, for example?

MR. PETERSON: Very little, I guess.

MR. DIEHL: That's the kind of difference I'm trying to get at like, for example, maybe our exports are more concentrated in Grades 1 and 2 compared to what's sold here, which would have 1 and 2, but also a greater proportion of 3, 4 and 5. That's the question I'm trying to ask.

MR. FISHER: I think if I might, Mr. Diehl, I would say that 20 years ago other than the Japanese and the European market the flow of exports was probably a lower quality than what was consumed by the domestic market.

I think they're on more of an even basis right now, but I think it should be pointed out that the domestic mills certainly have the first shot at anything that's grown in this country. They don't have the freight differential

of $25 to $50 a ton to move it to a foreign destination. It's here for the taking.

MR. DIEHL: Okay. Then if I could ask the same question with regard to durum?

MR. FISHER: Very similar. Again, of course, these things are going to vary from year to year. You have high quality markets in the foreign trade and you have those that are a little less, so depending on the type of good that's produced and the ability to pay. Certainly that varies a lot in the foreign market -- Latin American countries, some oxalic quality like Venezuela, for example. If you go to North Africa, things are a little different there. Italy is, of course, primarily typically one of the more discerning markets in the world market.

I think this varies from year to year, but in general I would say that people or markets are on an even keel in terms of the ability. Certainly the products produced in this country are of fine quality, and they seek out the better qualities.

MR. DIEHL: Okay. Maybe I'm trying to get too specific. I think you're saying that the profile of what's exported is comparable to the profile of what's sold here. Is that right?

MR. FISHER: I think in recent years it has evolved to a more even situation. Yes.

MR. DIEHL: Okay. Okay. Because exports are such a big part of the market, and I want to let Mr. Wechsler and Mr. Fisher and Mr. Peterson all comment if they wish. When the Commission looks at things like reduced acreage, reduced farm income, how can the Commission distinguish between any injury that's occurring as a result of imports into the United States, as opposed to other market factors that affect our exports? How can we understand that picture?

Maybe I could start with Mr. Fisher and Mr. Peterson and also let Mr. Wechsler comment.

MR. FISHER: I guess, Mr. Diehl, certainly a market is made up of many factors. We have supply and demand at work here every day. I realize what you're saying that it's difficult to sort out all of the factors that play into where prices are established from year to year or even week to week, but there certainly has been demonstrated here a very strong signal I think that regardless of the other factors involved that the pressure from the Canadian imports has very definitely flattened the price premium in the protein markets and also in the durum situation certainly and thwarted producers' efforts to expand.

MR. DIEHL: Okay. What factors are happening in overseas markets that the Commission ought to be aware of for our exports?

MR. FISHER: Certainly there have been economic

pressures in the Asian market and so on. There have been other factors that have affected wheat exports from the United States in general, but the classes of wheat in question here have retained more of their steady demand in those, and we can supply you information, you know, the tables that would support that.

For example, in the export market spring wheat has been quite stable in terms of its ability to supply those needs. It's a rather solid demand base there. In the case of durum maybe a little less so, but certainly we haven't seen the declines in the export sales that we've seen in hard red winter wheat or soft red winter wheat, for example, the other major classes of wheat produced in the United States, so I think maybe spring wheat and durum has been less affected by those factors and probably more affected by the subject of the day.

MR. DIEHL: You mentioned economic pressures in Asia. Is that pressure to reduce the selling price?

MR. FISHER: It reduced the overall demand for wheat in the Asian market up through about 1997. Since then the decline in Asia has stabilized and is showing growth again now.

MR. DIEHL: Okay. So the period we're mostly focusing on, 1997 to 2002, it sounds like you're talking about a stable or increasing demand?

MR. FISHER: Stable, yes. Stable to increasing in both Europe -- definitely increasing in Europe, but stable to increasing in Asia. Prior to that there were those economic factors.

MR. DIEHL: Okay. Mr. Wechsler, do you want to add anything?

MR. WECHSLER: I would just add three factors which I think should be borne in mind. I think it's a very relevant question, and if there were heroic changes abroad that were creating and transmitting these effects into the U.S. market and no contribution from Canadian wheat imports into the U.S. market, that would be a relevant thing to look at in the Title VII case, but fortunately this isn't a 201 case so you don't weigh these alternatives.

B, it follows on a 332 study and a 301 case at USTR. It's no secret to the Commission from its fact-finding roles that there have been significant accusations and findings by USTR about injury abroad by the Canadian Wheat Board. It's not like they're the whipping boy for problems caused elsewhere by others. I would say that's a second factor.

The third one goes to the kind of market fluctuations that Neal has discussed which point in a qualitative way to that not being the main explanation for what's going on in the U.S. market at this time.

The U.S. market is the world's single most important market for wheat. There are other premium markets, Italy and Japan to some extent, but basically the U.S. Market is the crown jewel in the world wheat trade.

MR. DIEHL: Okay.

MR. WECHSLER: So you get to concentrate on it without a lot of worry about these other secondary considerations.

MR. DIEHL: Okay. All right. I'm getting close to the end of my questions, so you're probably relieved about that.

Quantity Not The Reason. That's the title on Exhibits 2 and 3 that Mr. Fisher talked about. I'm not sure I understand that because I think Mr. Wechsler said that increasing quantities of imports were a cause of lower prices. I think, Mr. Fisher, if you could start on what that means? Mr. Wechsler, you can comment later if you'd like.

MR. WECHSLER: I'll take one line, and then Neal can take it forward. I think the focus of the title were the accusations leveled by millers in other fora that the real problem driving into Canada was somehow that the U.S. production was inadequate to meet their needs.

MR. DIEHL: So maybe as the title you mean U.S. Production Quantity Not The Reason?

MR. WECHSLER: Right. Right.

MR. DIEHL: Okay. Do you want to add anything, Mr. Fisher?

MR. FISHER: All I can add is that, yes, that definitely is the case. What we were defending here is the ability of the U.S. producer to produce efficiently and with quality in mind, and I think that certainly was the target here. I apologize for any confusion there.

MR. DIEHL: That's fine. Thank you. All right. One last question. Going to let's say Exhibit 3, the durum chart, Mr. Na got into this a little bit. It looked like demand total use was very low in 1988-1989 at about 75 million bushels and that it nearly doubled that later.

How much of that fluctuation in demand is U.S. fluctuation, and how much is foreign? I took your comments before, Mr. Fisher, to mean it's mostly a function of fluctuations in foreign demand.

MR. FISHER: I can produce information that would support that certainly. It was foreign demand. In that year of 1988, for example, I think that was the year you were referring to, the drought year where demand dipped. The export of U.S. durum that year dipped from what had been 82 and 62 in the years before down to 20 that year.

MR. DIEHL: Okay. All right.

MR. FISHER: While the domestic consumption stayed

up at 60 plus million bushels that year.

MR. DIEHL: Okay. All right. Thank you very much. Those are my questions.

MR. FEATHERSTONE: Mr. Deese?

MR. DEESE: Good morning. Thank you. I have a few questions for you.

Mr. Fisher, you spoke earlier about the wheat farmer in North Dakota has some options of other crops to grow, but he has a limited array to choose from because of climates and other factors. Could you tell us what some of his limited choices are?

MR. FISHER: Certainly I will, Mr. Deese. In North Dakota, as I explained earlier, we have about 20 million acres of actively tilled land, and roughly half of that we've always said is in wheat. That is declining.

The most likely candidates for alternate crops are what we refer to as row crops and oilseed crops -- sunflower, canola, even soybeans are making their entry into the northern plains to some extent, although they're quite limited, and they don't yield like they do in Iowa, for example. Corn is a crop. I'm citing crops that may be a million acres or more, as opposed to nine million acres of wheat. We see that they still pale by comparison certainly.

There are other limitations in that the rotational requirements of growing these alternate oilseed crops are

such that you can't grow them year after year because the disease problems tend to thwart the producers' efforts to do that. We do have some alternatives, but they're limited, and they can't be consistently grown. I fear the day when we have one of those normal North Dakota seasons where it's only 90 days and the soybeans and the corn and everything else freeze.

Suffice it to say there are significant limitations and the alternatives are few, but they do make up the vast majority of those alternate other acres that are not in wheat. That would be barley, flax, the oilseed complex and corn.

MR. DEESE: Okay. So it's true, I have read, that there have been some genetic improvements to corn and soybeans to make them shorter cycles so they can be grown in more northerly climates, but they're still a relatively minor crop in the Dakotas?

MR. FISHER: Yes, that would be a very good way to characterize them at this time.

MR. DIEHL: Okay. A related question. The 1996 farm bill had a relatively high loan rate for oilseed crops. The 2000 farm bill has lowered the loan rate for oilseeds and raised it for wheat. Is that likely to increase the acres planted in wheat?

MR. FISHER: That's a very good question. It's

one that's on producers' minds right now. There are some factors that would suggest that that will have some impact.

The other factors are that these minor crops, as unpredictable or as -- I guess the jury is still out as to whether they'll survive as long-term crop alternatives, but they have been grown for a period of years now where there is crop insurance now available on soybeans even in North Dakota and corn and other crops.

That will make it slightly easier for those producers to stay with those crops and not move back to wheat if we don't see the price responses that are required to incent producer to switch back to wheat.

MR. DIEHL: My next question is also for you, Mr. Fisher, but you can also comment. I would also like you to comment, Mr. Wechsler.

You talked earlier about low prices for wheat, and it seems like there's little argument about that. In fact, I saw for the 2000-2001 marketing year the wheat prices adjusted for inflation were the lowest since 1890.

Granted, Canada is a large producer and has some influence on the market, but there must be other factors going on. I was wondering if you could identify some of the other factors for the low wheat prices.

MR. FISHER: Well, Mr. Deese, we talked earlier about some of the world competition. Certainly there are

other factors that are involved in the whole makeup of the price of any commodity I suspect that's produced and traded worldwide, so one would not deny that.

There has been new production that has come on from some competing areas that has influenced that to some extent out of the Black Sea area in the former Soviet Union, some things like that that have added to the ability of the world to produce more wheat. Those are not the classes of wheat that we're talking about here, but they have had certainly an impact on the overall wheat price structure in the world market.

MR. WECHSLER: If you're going to go back to 1890, you're really looking at long-term economic history. There's a tremendous change in technology over that period which has made the cost of production in an absolute secular sense decline dramatically and is responsible for the large shift in farm populations to urban settings.

What we have over the last decade certainly, in particular between Canada and the United States, is access to and implementation of the identical technologies. These farmers know one another. They do things pretty much the same way. They implement the latest in computerized techniques. They follow their crops between planting and harvest, so what we're seeing much more in recent years is a relatively stable technology period and factors other than

production technique at play.

Now, there are always a mass of factors in farming and weather changes day-to-day and over short regional differences are there too, but you have to get down to at the end of the day the reason the Canadian Wheat Board has persisted in a free trade zone where it's been the subject of huge controversy not just from the United States, but its own western Canadian farmers. There's an insurrection going on against it in Canada and has been for several years. That's a real factor, too. I don't think you get to explain what's happened to wheat prices in recent years based on technological change.

MR. DEESE: So relatively stable, but worldwide more producers are entering the market?

MR. WECHSLER: Well, there's also a huge difference in, I mean, one of the big differences in wheat marketing, which Neal is actually an expert on, is the openness in this past decade compared to the prior one of the markets in China and eastern Europe and Russia. The global market is larger than it was because there are fewer borders where people are fenced off to starve because their governments won't permit the purchase on the world wheat markets and other grain markets of food when situations are bad.

That's a major change. I don't think you find any

of those dramatically overpowering the factors we're talking about in the last three to five years.

MR. DEESE: Mr. Fisher, this is just a factual question because I didn't understand fully what you said earlier. In your exhibits you had a couple that were showing that domestic supply exceeded demand. In those, I wasn't sure exactly what domestic supply was. Was that production plus inventory minus exports?

MR. FISHER: Mr. Deese, in that example the way it was depicted there with you'll recall the yellow bars and what I couldn't identify, but what someone said was the green bar. Those represent the annual production plus the green portion or that lower portion being the inventory carried into the beginning of the marketing year, so it was a rather straightforward approach there that this is what was produced, this was the inventory that's all available to the market and the demand.

Total demand, both export and domestic, was less than that quantity in each of those years, and I think we looked at it over a 15 year period. We were safely within those bounds each time.

MR. DEESE: All right. One more question. You brought these products in that show the differences in making the specialty breads with the spring wheat. If a grower for some unknown reason had wheat at a lower protein

level but he didn't have access to hard red spring wheat, could he then make the higher product by purchasing wheat gluten and adding that to the lower protein wheat?

MR. FISHER: That's an interesting question, and it's one that I think is a valid question. In the industry, significant quantities of wheat gluten are purchased to enhance the baking properties, the performance properties, of flour I suspect every day.

However, the cereal chemists, cereal scientists that I've worked with and consulted, have always indicated to me that you still obtain the better performance with the real inclusion of a hard red spring wheat in the mix.

There are cost factors involved and sheer performance factors. That, too, is not totally substitutable, but you can mimic some of the performance levels of a hard red spring wheat in that manner.

MR. DIEHL: I have no further questions.

MR. PETERSON: Excuse me, Mr. Deese. Just another addition to that. You know, traditionally a lot of the wheat gluten, and we know Europe produces a lot of it as a byproduct, and there have been trade discussions on that. Because the gluten typically is coming from some of your lower priced, generally mid to low quality wheat, you know, it's those qualitative factors that you get out of spring wheat or Canadian spring wheat or U.S. hard red spring wheat

that is there.

From a protein quantity standpoint, yes, you've got, you know, a similar quantity, but they're adding the spring wheat for, you know, the functional enhancement properties, and those can only be gotten from the spring wheat.

MR. DEESE: No further questions.

MR. FEATHERSTONE: Mr. Mehta?

MR. MEHTA: Mr. Fisher, you mention in your testimony about nitrogen per acre for North Dakota farms after labor and management charges. You know, we don't have the data for all the years. Would you be able to provide the data to the Commission for other years?

MR. FISHER: Yes, we will.

MR. MEHTA: Thank you. I have no further questions.

MR. FEATHERSTONE: Mr. Reeder?

MR. REEDER: Let's see. Mr. Hunnicutt, you indicated in your testimony and in the petition that hard red spring is blended with hard red winter. Is Canadian hard red spring that's imported into the U.S. blended with U.S. hard red winter to make flour in the U.S.?

MR. HUNNICUTT: I'll have to turn to Mr. Fisher or Mr. Peterson for that one.

MR. FISHER: Certainly, Mr. Reeder, the

interchangeability of the U.S. spring wheat and Canadian spring wheat is I don't think in question, so there are very similar fungible properties involved here. The answer would be yes, if I understood the question right.

MR. REEDER: Okay. Is it fair to say your argument with regards to substitution of hard red spring and hard red winter is that hard red spring can be substituted into hard red winter, but hard red winter cannot be easily substituted in hard red spring?

MR. FISHER: Mr. Reeder, certainly --

MR. HUNNICUTT: No. Let me start, and I'll let Mr. Fisher finish. I'd say that's not the theory of the argument as we put it forward. It's that hard red spring is a specialty wheat, and it can be used for production of specialty products and can be used as a specialty blend characteristic with hard red winter, but not that it is a substitute one product for the other. I'll let Mr. Fisher expand.

MR. FISHER: I guess I would basically agree with that. The overriding fundamental purpose for buying a spring wheat is to improve the performance of another existing wheat. It's an improver, and in that sense it's marketed as a blending wheat worldwide. On the lower end, I think that certainly limits its substitutability.

MR. WECHSLER: It's helpful to distinguish

substitution in production from substitution in consumption. I think the question you had was focused on, am I interpreting correctly, on the consumption end?

MR. REEDER: Right.

THE WITNESS: Because in substitution in production you have to some extent these row crops and other things that are not wheat at all, so there's nothing unique in terms of determining domestic like product about the ability of durum growers to move to some extent towards hard red spring. They can also move to row crops to some extent.

On the consumption side, in the mixtures there's no question that in certain adverse environments sometimes producers will especially abroad and in countries that don't have demanding quality standards move the mark a bit and cheapen the product. There are competitive consequences to that, and you see that most in status economies where there are big deals made one way or the other, one year to the next.

If the government is running out of money and they can't do a big quality wheat purchase to improve their local production of bread or couscous or whatever it is, what we're suggesting is that if you have a mixture required to produce a bread there is an ideal point, and that substitution around that point is not a major factor in determining the demand.

MR. REEDER: Okay.

MR. PETERSON: Mr. Reeder?

MR. REEDER: Yes? Go ahead.

MR. PETERSON: I think another thing, too, that needs to be looked at is on our grain exchanges and commodity futures. If there was so much readily substitution of hard red spring for bread products, if they work the same and it was just simply a matter of price, then I think it begs the question why can't you deliver equivalent proteins of hard red winter at Minneapolis and vice versa, hard red spring to Kansas City, if they are truly interchangeable.

MR. REEDER: I noticed in your petition you included wheat seed. Why did you do that? In other words, we're talking wheat growers and so forth, probably a separate industry.

I notice in your footnote you said you were concerned about in the case where you had a countervailing or dumping duty imposed that there would be circumvention, but, you know, there's not much mention here of wheat seed.

MR. PETERSON: Mr. Reeder, that's a good question. That's truly, you know, where it was geared at was, you know, a circumvention in the case of duties or some kind of tariffs along those lines; that it could be reclassified, you know, on the export end as seed wheat. We know it's

actually milling wheat.

Similar to some of the other confusion that takes place in the Canadian system, we have good quality milling wheats produced in the U.S., but because there are different varieties -- they produce the same type of bread, but they're classified as feed wheat in the Canadian system.

I don't know if Charlie has anything to add.

MR. HUNNICUTT: I think that covers it. It was an abundance of caution to make sure that everything was covered because there is a possibility of movement between those HGS categories.

MR. REEDER: Okay. One other issue on feed wheat. Roughly ten or 12 percent of the hard red spring crop is used for feed use. Are any of the imports of hard red spring, Canadian hard red spring, are they used in feed, or is all or nearly all of it going into milling use?

MR. PETERSON: I would suspect, and I guess it would probably take a little more research on our part, but I would suspect that all of it is going into domestic mill use for food consumption.

There was, you know, in 1993 prior to the POI a lot of Canadian feed wheat that did come down into some of the feedlots. There was some frost damaged and weather damaged wheat. I would say over the POI that all of it is going into domestic food channels.

MR. REEDER: Thank you.

MR. FEATHERSTONE: Mr. Payne?

MR. PAYNE: Thank you all for appearing. I just have a couple questions on the protein premium issue I guess for Mr. Fisher and Mr. Peterson.

During the POI and specifically during the 2001-2002 crop year, the yield of the crop grown in the United States, did that have a higher protein content than was seen either on average or in the few years prior to that? Has there been an increased supply of a higher protein wheat?

MR. FISHER: Mr. Payne, if the question is of the North Dakota or the spring wheat crop in general, I would say no. The protein levels have been about on average in recent years or during the period of the POI.

MR. PAYNE: For the hard red spring specifically?

MR. FISHER: Yes.

MR. PAYNE: If it's your allegation that it's the imports that are causing the elimination or the reduction of the protein premium, what specifically about the imports is doing that? Is the Wheat Board bringing in a higher quantity or higher supply of the higher protein wheat? Is it just that the supply of the higher protein wheat is so much higher now?

MR. FISHER: In any premium market, the balance can be rather fragile. We're talking about wheats that are

small in quantity here by comparison to the larger class of hard red winter wheat, for example. It does not take a lot to disrupt a protein schedule like that, so, yes, the imports from Canada are going to by definition, since it's spring wheat, are going to be toward the relatively higher protein levels that are marketed within the U.S. probably somewhat equivalent to the U.S. spring wheat levels. That sheer availability tends to dampen the premium.

MR. WECHSLER: That's an interesting question to which we've devoted actually quite a bit of time and research originating with the Canadian Wheat Board website and the academic publications that they've sponsored and publicized on it.

They had a very interesting study. The entire structure of the Canadian Wheat Board's pricing compensation -- not pricing, but compensation system for Canadian farmers is based on the protein content of the wheat they turn over, so they publish a schedule in which there's an initial and a final payment, and it is based on tenths of a point protein difference for whatever the specific wheats are.

They publish this in advance, and that is the main signal, the market signal to the Canadian farmers on what wheat to plant and what inputs, fertilizer inputs and whatnot, that can be used to raise the protein. Clearly they look at the premium they get and produce to the point

where they're going to maximize their incomes from the Board by doing it.

There's a study underwritten by the Board and the Manitoba RAC, Regional Agricultural Council -- I may have it wrong -- which studied a five year period in the late 1990s, western Canadian acreage allocation, and even within the terms of putting aside subsidies, dumping, what we're here today about, even within the terms of the market, their conclusion was that there was a 20 percent overage in the allocation of wheat to high protein wheats in western Canada and that western Canadian farmers would have been better off, the whole system would have been better off, with lower protein wheats. I'm not saying low protein. Lower protein wheat.

That's clearly just an indictment of these bureaucratic set Canadian Wheat Board protein premiums. The point is once you get that in the system there are two reasons for doing it. One is that big bureaucracies that have central control make big mistakes, and we pay the price down here. The second reason is because the Wheat Board as an entity is set up not to maximize income of Canadian wheat growers, but simply to maximize the turnover and not get left with end stocks.

In other words, it's a wheat market agency ultimately, even though it controls grower actions and

incentives. They move the wheat they get. It helps them to have higher protein wheats to move because in any crunch they have they can simply move higher protein wheats into lower protein markets and have a marketing advantage.

There is a history of them fulfilling in various situations contracts with over supply of protein, and in any case they have systematically increased above free market levels the supply of higher protein wheats in the world markets and the U.S. market, so that's where the protein premium have gone. They've gone into basically giving the Canadian Wheat Board a marketing tool, wheat protein.

MR. PAYNE: Thank you. Just one more question on this. You may have touched on it briefly in your last response. Is there a higher cost of production, a higher growing cost, associated with insuring you get the higher protein wheat?

MR. FISHER: Mr. Payne, the general cost of producing a crop for averages would be quite similar I think from producer to producer, although those who own their land and other things have different sets of variables there, of course.

Protein can be enhanced with inputs. The primary one is nitrogen fertilizer. To the extent that fertilizer prices fluctuate somewhat in the market as well, obviously there's an additional cost in that. They've been rather

high lately, but, yes, with inputs you can influence the protein level, and there is an additional cost in doing that, in enhancing that above what you might have as a yield goal of an average yield.

MR. PAYNE: Thank you. That's all the questions I have.

MR. FEATHERSTONE: Mr. Carpenter?

MR. CARPENTER: Thank you. I think I'd like to start with a question that's actually been raised a couple times already. I think this is Exhibits 2 and 3 that were handed out, the color charts.

I guess my confusion initially I was looking at the black line, and I was assuming that was U.S. demand, but I guess what it is really is is it includes exports, so I was just wondering. If you were to subtract out exports, could you give me an idea as to what that line would look like? Would it be fairly flat?

If it's possible to do that, if the data are readily available, would it be possible to reproduce a chart in your brief where you factor out exports?

MR. FISHER: Certainly. Mr. Carpenter, that information is readily available. There are some questions sometimes on the USDA data as to its accuracy at some levels, but it's the best we have. Certainly it is reproducible.

There may be some variation year to year, but we do have USDA's domestic use estimates. There are also some estimates that would take out some of the potential for small non-food uses that would indicate actual mill demand.

Yes, I have in front of me a chart that has that information on it. We can make that available to you through the formal process or however you wish to receive it.

MR. CARPENTER: Okay. That would be great. I'm assuming that demand for the final product, such as the various types of bread and pasta and so on, would be fairly flat, maybe having a slight gradual upward trend over time. As far as you know, is that essentially the same for the hard red spring and the durum wheat, or do the demand curves tend to fluctuate more than the demand curves would be for the end use products?

MR. FISHER: Well, in terms of the domestic use for spring wheat and durum, in each case the trend I would say is up over the long haul. For the overall consumption of red flour or let's say wheat based products in the United States, I believe they reached a recent low in 1972 and have been in a general climb out of that low point ever since.

There was some plateauing again here just a few years ago, but I think growth has resumed in that industry. There's been an almost steady, and we can make these charts

available to you also. There's been a steady, gradual uptrend in the domestic consumption, which are those numbers you're concerned about here, sorting it out of this line that I had in both spring wheat and durum, yes.

MR. CARPENTER: I would appreciate that. If I could back up to kind of a basic question that probably everyone else here understands, but I don't have a good handle on?

For the various types of wheat, in addition to the hard red spring and durum and also the hard red winter, but as well the soft red wheats and the white wheats, what parts of the country do those tend to be grown in?

MR. FISHER: Mr. Carpenter, we have a map, and in fact I have a sample card with me in my briefcase that I can give you with all six classes of wheat and one of these so-called dot maps, a map of the United States that will illustrate that.

Just for general reference, the soft red wheats tend to be grown scattered across the states east of the Mississippi River. The durums would be grown largely in North Dakota with smaller amounts in Montana, South Dakota and a bit in Arizona and California.

The soft white wheats tend to be grown in the Pacific Northwest states with some in Michigan and New York, and, of course, the hard red winters throughout the central

plains states; Nebraska, Kansas, Oklahoma, Texas would catch a vast majority of that.

Hard red spring wheat, about 50 percent in North Dakota and the surrounding three states of Montana, South Dakota and Minnesota with a scattering across the Pacific Northwest states, again a minor amount.

We can make that map available to make that more concise certainly.

MR. CARPENTER: I would appreciate that. That would be helpful.

With respect to the two products we're looking at here, the hard red spring and the durum, I get the impression then that most farmers would not have a choice of planting these other types of wheat as an alternative to the two that we're looking at here?

MR. FISHER: Essentially that is correct. There's a small portion of southwestern North Dakota where the growing season is mild enough, should I say, where winter wheats can survive, but it would amount to maybe one or two million bushels of production per year in a state that traditionally produces about 300 million of the other two classes of wheat, so it's a very, very minor consideration.

Yes. The answer is yes, spring wheat and durum are the two classes of wheat that would tend to thrive in the area.

MR. CARPENTER: Okay. The marketing year for HRS and durum is June through May. What is the marketing year for hard red winter? Do you know?

MR. FISHER: In the USDA sense of it, they keep track of the marketing years on exactly the same basis from June. The wheat marketing year is established by USDA as June through May 31.

MR. CARPENTER: Okay. But the growing season tends to be different?

MR. FISHER: That's correct. These other classes of wheat tend to be planted in the fall and fertilize over winter and then are harvested. We can start harvesting wheat in Texas in May, but the vast majority of the hard red winter wheat crop would be harvested in June/July. Our crop is planted in the spring and harvested the same year at about a 95 day growing period.

MR. CARPENTER: Okay. Another basic question relating to the quality attributes of grade, protein content, vitreous kernel content and dockage. Who exactly measures those levels and does the grading or whatever?

MR. FISHER: In the case of export wheat the Federal Grain Inspection Service, now known as GIPSA, a division of USDA, certifies each of those cargoes that go out, but you may be referring to the analyses or the information that we have supplied you.

Each year we conduct a survey of the quality of the crop grown in our region, and in fact U.S. Wheat Associates provides one for the rest of the regions of the U.S. also. Those are graded in labs that are either state licensed or federally licensed labs for the actual grading data and other physical and performance characteristics.

In the case of our wheats, they are analyzed at North Dakota State University in their Science and Food Technology Department.

MR. CARPENTER: Okay. Maybe to put it another way, I'm thinking more in terms of in connection with how the products are priced.

MR. FISHER: If you have let's say a first purchaser is deciding whether to buy U.S. or Canadian wheat, and they're looking at these different protein levels and vitreous kernel counts and so on. Understand, too, there are differences. I guess if we could limit it just to the spot market, although I guess the Canadian market isn't typically sold in the spot market, or the different price levels for these different protein levels and other attributes.

I should probably back this into the country a little further, as they say. At each I'll use the term first purchaser, Mr. Carpenter. In the State of North Dakota, for example, the first purchaser is generally that

country elevator where the farmer first delivers his wheat. That's his first point of sale.

There are these tests run for protein with a calibrated, regulated protein tester. There are formal test weight guidelines and equipment that is certified and followed, but the grading may be a little bit more on an informal basis based on his experience in the grain trade. That's where the ultimate first classification and grading of the crop takes place accordingly. Those are the characteristics on which he offers grain for sale in the market to prospective buyers.

MR. CARPENTER: Okay. Thank you.

MR. PETERSON: Mr. Carpenter?

MR. CARPENTER: Yes?

MR. PETERSON: Maybe just one more addition on the official GIPSA inspection. You know, most buyers can request that on U.S. purchases. In Canada, there's the Canadian Grain Commission. I also believe there are some private inspection entities that do inspect some of the exports coming into the U.S., SGS.

We do have a private entity in the U.S. as well that does inspect shipments between origin and export destination or domestic mill, but a lot of time grain will be sold on some sort of official certification; in Canada either Canadian Grain Commission or in the U.S. GIPSA.

MR. CARPENTER: Okay. Thank you. Like Mr. Diehl, I also had a question about exports. It's not too common where we have a product where over half of one of the products is exported and about a third of the other is exported. I think, you know, even though obviously this isn't a 201 we don't have to weigh causes, but we do have to look at the effects of other factors on the condition of the industry to some extent.

In your response to Mr. Diehl, I think you focused mainly on export volumes. I was wondering about prices. Can you comment on price trends over the last few years? Have they been stable? Are they increasing or decreasing? Are there also good, reliable data that we can use from USDA that would at least show unit values for the different types of wheat that we're looking at for exports?

MR. FISHER: There is price data available. It probably wouldn't be on a unit basis I don't think, but there certainly are price data available from USDA to some extent, but also from private entities that we could make available to you.

The export prices are a function of the market here too as well, certainly, and established in the grain exchanges and in the market here as well for the movement of U.S. wheat into the foreign market.

MR. CARPENTER: Okay.

MR. FISHER: It's not a separate function I guess is what I'm saying.

MR. CARPENTER: Any information that you could supply in your brief regarding export prices or unit values I'd appreciate seeing.

I also had a similar question that Mr. Deese put to you about adding wheat gluten to the product to raise the protein levels. Both of us happened to work on a wheat investigation some time ago, and I recall from there I think about 80 percent of U.S. wheat gluten was used in the production of bread, the other 20 percent for other uses.

I know looking at a lot of labels of bread products and so on it's very common to see wheat gluten as an ingredient on the label. I got the impression it was fairly common that millers would add gluten to the product to raise the protein level, although I guess it doesn't necessarily mean that, for example, in terms of substituting hard red winter for hard red spring that in lieu of buying hard red spring you could simply buy hard red winter and add more gluten to it.

It may be more typical that what happens is the protein level of the wheat is low in a particular year due to climate or soil conditions. The millers would typically have to add gluten to it to raise the protein level.

I guess that's an issue that I'm interested in,

but I guess really in terms of substitution between hard red spring and hard red winter I'd be interested, and I guess we'll hear testimony this afternoon and we can ask them that, but I am interested just in how common it is that the millers would view it simply as a choice between buying hard red spring or buying hard red gluten and adding gluten to the product. I just don't know how common that is.

MR. FISHER: Mr. Carpenter, in our attempt to answer the question earlier I felt like we probably didn't have quite enough information to give a complete answer. Maybe it would be advisable if we sought some more information in the actual usage. I do not have that right now.

It's always been my impression that it's not a perfect substitute certainly, but one of those things that are cost related and one of the alternatives certainly in the mix. We'll try to find some more information on that for you.

MR. CARPENTER: Okay. Thank you. It might have been you, Mr. Hunnicutt. I'm not sure, but someone referred to increasing costs early in the presentation. I was just wondering if the panel could elaborate on specifically what costs have been increasing to the growers in recent years.

MR. HUNNICUTT: It was me, and I will defer to Mr. Fisher. I was thinking of particularly nitrogen fertilizers

and some of the input costs that have been higher priced in the last two years, but I'll let him elaborate.

MR. FISHER: In terms of rising, I need a little bit of clarification. The factors that have been increasing?

MR. CARPENTER: Production costs, I guess.

MR. FISHER: Well, certainly --

MR. CARPENTER: Or transportation costs also.

MR. FISHER: One of the costs that certainly is related to producer profitability is the cost of transportation, but the more basic inputs are market inputs as well, so fertilizers, for example, tend to be something that fluctuates on the basis of world petroleum prices. The fuel itself is obviously related to that and land values. We've gone through periods of depressed land values and declining land values, but there is and can be certainly appreciation in all of those costs of production.

I think while there have been variations and wavering in that march, I think there's been a steady increase in the cost of production over time. Those would be the primary factors involved. Inputs, land and machinery.

MR. CARPENTER: Okay. Just one other question. Mr. Wechsler, on page 14 of your exhibits your chart shows that the premiums for the higher protein wheat in the most

recent period have narrowed. I guess my question there is are the premiums supply driven?

In other words, I assume the protein levels are related to conditions such as growing conditions, climate, soil conditions and so on. They're not cost driven. In other words, there's nothing the farmer can do specifically to increase protein levels. Is that right?

MR. WECHSLER: Actually, not quite. The answer is complicated. The protein will respond to input intensity, particularly fertilizer and in certain situations irrigation decisions and things of that nature, so it's to some extent under the control of the farmer.

It's also in response to your precise planting decisions, on what you put in the soil. The premium responds both to supply, supply conditions and competitive conditions with imports.

There's never a situation in this industry or virtually any other in which you can just say there's one factor and only one factor of work. What is dramatic there is the compression across all the different premium levels, protein levels.

MR. CARPENTER: Do you have any theory as to what the principal factor is that's causing the narrowing of the premium? I mean, do you think it's over supply, for example?

MR. WECHSLER: Well, I think the big, big factor, the 800 pound gorilla in this case, is the Canadian Wheat Board and its moving from 25 to 29 percent of the durum market and adding a couple of extra percentage points to its already large, I think from 20 to 22 percent of the hard red spring market. That's the big factor.

The Canadians are known worldwide. They put it as high quality wheat. Now, that's been successively debunked, and we haven't heard about that as recently. High protein wheat is what they have.

We have high protein and all kinds of other wheat, but we don't have a board dictating and tweaking and pushing us into an unnatural proportion of high protein wheat. That's what they have in their lauder, and that's what they market. I think that is the big factor, and it's certainly the factor that's reachable in this case.

MR. CARPENTER: Okay.

MR. WECHSLER: I'd like to make something clear as an economist. We never do univariant analysis. There are lots of supply factors, lots of demand factors. What the Commission has control over is one factor, or in this case two, dumping and subsidies.

An affirmative decision in this case will not make everything rosy for wheat farmers in the United States. They still face a massive problem with the Canadian Wheat

Board's activities abroad. To some extent, if you deflect the Canadian Wheat Board from its activities inside the United States without dealing with them abroad they will see a displacement of the injury from here to there. That's tomorrow's problem in another forum. They're active on that, or we're active on that.

What we can do is remedy this particular element and remove a thorn that is particularly irksome when you have other problems as well. No one has come in here and said this is the only problem before the wheat industry in the United States.

I do want to make that clear. We show this situation. A lot of it goes to the vulnerability, and there's no question that a material portion of it is due to the subsidies and dumping at issue in this case. There's a lot more, too, to the Board's activities beyond just subsidies and dumping.

MR. CARPENTER: Okay. Thank you very much for your responses.

MR. FEATHERSTONE: Mr. Diehl?

MR. DIEHL: Just a couple of follow ups. Staying with page 14 from your exhibits, Mr. Wechsler, it looks like there is something very different in that last year than the others. One thing that occurs to me is whether the drought was in effect at that time for hard red winter pushing up

protein values there.

I guess my question is, and maybe I should direct this to Mr. Fisher and Mr. Peterson. The drought affecting hard red winter, was that occurring in this last period that we're looking at, the 2001-2002?

MR. FISHER: The major impact on the hard red winter wheat crop was in this current crop year, 2002.

MR. DIEHL: Okay. Was there some impact in 2001-2002?

MR. FISHER: I don't think so because the protein level, for example, in the hard red winter crop last year was right on the average, and that would not signify there was much of a drought stress impact there.

I find that protein levels actually for the last several years in the hard red winter crop have been below average, implying certainly no impact of drought and in the northern plains of the U.S. on average protein levels as well, so no excessive supply --

MR. DIEHL: Okay.

MR. FISHER: -- in either area there.

MR. DIEHL: Okay.

MR. FISHER: But the Canadian droughts last year did induce significant protein increases in the Canadian crop in 2001.

MR. DIEHL: Okay. Thank you. One last question.

Mr. Peterson, you talked about it's not only the quantity of the protein, but the quality as well. If you could just elaborate on that a bit? If you're in a situation where you're not having to use hard red spring in order to increase the quantity, could you elaborate more on the quality issue?

MR. PETERSON: Well, you know, that's a very good question, Mr. Diehl. I've spent a lot of time working with some of our international trade teams with some of the domestic industry cereal scientists down at North Dakota State University.

There are a number of tests to measure the functional quality of bread wheats. You have the farinagraph, alveograph. In essence what all of them are doing is adding water to flour, mixing it into a dough, measuring how much strength it requires to mix that dough, how long you can mix it before the dough starts breaking down, how much water you can add to that dough, you know, for certain absorption levels. A lot of them have direct impacts on the final product.

You know, for specialty breads they like a lot of the moisture, the volume, some of the crust aspects. Shelf life is extended with some of the higher absorption products. Also, the growth in bagels, you know, hearth breads, just a lot of those specialty food products that we

like a lot of chewy texture to. Those all come from the inherent qualities in hard red spring wheat.

MR. DIEHL: Okay.

MR. PETERSON: Like I said, we'll do some more research on the wheat gluten issue, but I think that's when all the cereal scientists talk about it why you can't have a one-for-one substitution with wheat gluten either is you don't get those inherent quality factors. There's more than a quantity issue.

MR. DIEHL: Okay. Thank you. Those are my questions.

MR. FEATHERSTONE: Thank you all again for both your direct presentations and responses to all those questions. We very much appreciate it.

We'll take a ten minute break, at which point, Mr. Cunningham, if you could come forward we'll proceed. Thank you.

(Whereupon, a short recess was taken.)

MR. CUNNINGHAM: Good afternoon, Mr. Featherstone.

MR. FEATHERSTONE: Welcome, Mr. Cunningham, the other Mr. Cunningham. Please be seated.

MR. CUNNINGHAM: The other Mr. Cunningham, absolutely, the second string Mr. Cunningham today. I'm Richard Cunningham, Steptoe & Johnson. I represent the Canadian Wheat Board. With me is my colleague Matthew Yeo

from Steptoe and Richard Boltuck from Charles River Associates and Daniel Sumner from the University of California at Davis.

I've been doing this stuff for 30 years and I suppose I should never be surprised at anything anymore, but I've got to say this case really surprises me. It surprises me, because of this case being brought at this time. I say that both because of the economic situation that prevails in this market, at this time, and also because this case is brought at a time when it flies directly in the face of a major decision just made by this Commission last month.

Last month, this Commission decided a seminal case that's, I must say, eerily familiar to this one. The case was cold-rolled steel. There, you had before you an industry, whose situation was clearly not one of current import caused injury. Imports were falling precipitously, prices were rising rapidly, and those trends were forecast to continue.

The injury of which the steel petitioners complained had occurred earlier in their period of investigation and there sure was strong evidence of that earlier import caused injury. In fact, the Commission had just rendered an affirmative serious injury, not just material injury, finding on flat-rolled, including cold-rolled steel. But the Commission's decision in that cold-

rolled case was clear in two ways that are, I submit, dispositive, dispositive of the case you have before you now.

First, the Commission determined that an affirmative decision is not appropriate as to imports that are not currently causing or threatening industry -- injury and do not eminently threaten injury, even where injury from imports earlier in the POI was clear.

And second, the Commission had to determine in the steel case whether it made a difference that the cause of the improved import and price trends was the 201 order. And it found that where such an exogenous factor caused a substantial change in conditions of competition, the Commission must base its analysis on the new changed conditions, not look back to the different world that existed before.

With that in mind, let me turn to this case, and I'd like to go through a series of charts with you. We have handed them out to you. They're numbered one through -- one through 12 -- one through 12, with a little page of text at the end of them. I'd like you to insert a separate chart that we handed out on U.S. hold-rolled spring planted acreage as 9(a), so you know where you place it. Okay.

MR. FEATHERSTONE: I think we've got that one, Mr. Cunningham, but not the big --

MR. CUNNINGHAM: The down payment, but not the big order, okay. Oops, what do we got?

(Pause.)

MR. FEATHERSTONE: Thank you.

MR. CUNNINGHAM: The first set of charts I'm going to go through show somewhat dramatically, I think, how this industry and this market, like the cold-rolled steel industry and the cold-rolled market, is today demonstrably not a market where imports are currently causing or threatening material injury. And let's start with price.

The first chart shows the monthly average hot-rolled spring price received by farmers during the period of investigation. And I want you to look at the right-end of the chart, the current situation. You will notice that prices have risen and have been rising, actually, since mid-2001, but they've accelerated that rise recently. The latest data from the U.S. Department of Agriculture shows prices about a little below $3.50, higher than any point in the entire POI.

The petitioners have given more recent data in their petition at page 35. The price is now at $3.50 to $3.75 per bushel for August production, far above the POI -- anything in the POI. And I might add, if you would look at Exhibit 1 from the petitioners earlier, where they have the -- somehow derived historic price levels on a dotted line

for hard red spring a little below $3.50, you now have prices in this market even below what they think is the historic norm for prices. Clearly, pricing in this market is not depressed now. There is not price injury of hard red spring.

Similarly, look at the next chart for durum. And the durum prices have been increasingly rapidly since mid-August -- excuse me, August of 2001. They have reached -- in the latest USDA data, they've reached price for an average for August of $3.50. Petitioners have noted in their petition at page 35, that the end of August price has risen slightly above $4.00. The same points can be made here about these prices, as about the prices of hard red spring. They are now below -- now above every price point on the entire period of investigation and they are above what petitioners said in Figure 1 was the historical norm of prices in -- for durum. This is not a case where there is, at present, any price depression, import caused or not, and, accordingly, there is no price -- no valid price case here at the moment.

Let me just pause for a moment to talk about underselling, too. Our economist works nights and we've had a chance to look at the underselling data. The underselling data is, of course, confidential. I'm not going to go into it in detail. However, you will find it entirely

consistent, remarkably consistent with the conclusion that you've reached in the 332 investigation; namely that as to durum, there is consistent uniform overselling by imports; as to hard red spring, there is predominant overselling with some mixture of a little bit of underselling sporadically.

There is not a price case here. This is not an injury that can come to you and say, we are being injured in price or that we have a problem with being undersold in price.

Now, let's look at volume. Now, let me pause for a moment before I go to volumes on hard red spring, because there is a statistical issue that the Commission staff probably is already aware of, but let me just point it out to you. The HTS data contain wheat that enters the United States, but is transhipped to the Carribean and to Latin America. We have factored out that -- those non-U.S. volumes from the data, using data from the Canadian Grains Commission, which identifies those transient shipments. And we'd be happy, if the staff would like, to work with -- show how we did it and make sure you understand how we get to the data.

Look at the current situation in imports of hard red spring. Hard red spring imports, eerily like the imports in cold-rolled steel, have been plummeting. They have plummeted from beginning late last year and they are

now at the lowest monthly point on the chart. There is, as to hard red spring, no present case of increasing imports; rather imports have fallen and fallen to the lowest point on the chart.

Durum imports have begun also to fall in the most recent month -- in the last month of the POI. That trend has continued after the POI. I don't have it on the data here. The forecast by USDA for durum imports for the crop year 2002, 2003, when put on an average monthly basis, comes out to a figure down somewhat from the last entry on the chart there. We have declining imports also there for -- in durum. I'm going to get back to the volume issue in durum later on, when I discuss it in some more detail, with respect to cause and effect.

I might go back -- take you back to the monthly imports chart of HT -- of HRS for just a second. If I did the same thing with that as I just did with durum, that is factor in the projected USDA crop year 2002, 2003 imports and put them on a monthly basis, this would be down almost 50 percent from that low -- from the figures for 2001-2002. This is -- these are imports that are not going up. They're going down and they're projected to go down even farther.

Now, let's turn to domestic deliveries and the picture there is also good. In the next chart, Chart 5, we show current U.S. domestic deliveries for the crop year

2001-2002. The way we have gotten them is we have taken total domestic use from the USDA statistics, cranked out imports. And I might say the import -- cranking out the imports, as USDA gives them, gives a somewhat -- it's a larger amount of imports than it should be and be totally comparable, because the imports contain imports of food that contains wheat, which is not a large part of the imports. There's no reason to leave it. It varies from year to year, so as to drop the trend. But, you should be aware of that little gimmick there.

The trends, however, are significant here. Total domestic use less imports, that is U.S. domestic deliveries for durum next year will be up 12 percent. It will be up six percent for the -- for the hard red spring. Substantial gains coming for this industry. This is not an industry that's injured today. It's not an industry that's threatened. Things are getting better.

Now, let me say just a word for a moment about the argument of the petitioners here that, oh, yes, things are a little better now, but -- in fact, they're a lot better, as you can see -- but this is because of the drought. A couple of comments on that.

First of all, the trends that I have talked to you about are not caused by the drought. And if you turn back to Chart No. 1, you will see that imports have been

increasing in hot red spring, well, irregularly since August of 2000 and pretty much continuously since August of 2001, clearly long before the drought played any role. And you may notice that they said, just in their earlier testimony a moment ago, there was no drought in 2001-2002 and, therefore, there's no drought in that year to explain what was already a rising trend. I might also add that the beginning of these trends at this early date precludes any argument that somehow these trends are -- because of the price trends or the import trend I'm about to show you, or because of the filing of the petition in this case long predates that.

Now, look at durum. Durum is even clearer. You look back about August, September of 2001, the price increase begins and continues throughout the rest of the period on the chart, clearly not caused by the drought. You look at Chart 3, the declines in import volumes have been taken place since about November of 2001. These are durums, then, that are not drought caused trends.

But even if they were, even if they were, for the life of me, I cannot see how the petitioners here could distinguish from a legal standpoint, the drought which they say dramatically changed the competitive conditions here for 2002, 2003, with the 201 order, which changed the competitive conditions in the steel case. The Commission's

obligation, where they have such a watershed event -- that's the Commission's term, that's not me making a pun on the drought -- when it has a watershed event like that, the Commission's obligation is to look at the post-watershed event conditions and determine what -- or whether an affirmative determination should be made on the basis of those conditions. The answer here is clear. There is no possible affirmative determination on that basis. This case should be made to go away.

Now, let's, however, play the game the way petitioners want to play it and let's look back over the period of investigation. And we're going to look separately at hard red spring and at durum. There is a threshold issue as to hard red spring, however, and it's one that came up in the discussion this morning, and that is like product. Our belief is that hard red spring is not a separate like product, that it should be combined at least with hard red winter and, more appropriately, although not significantly different, with all hard wheats. So, let me turn to my colleague, Mat Yeo, to talk just a bit about the like product issue.

MR. YEO: Thank you. We have a separate handout on the like product issue. It says at the top, "hard red spring and hard red winter, no clear dividing lines." I think it was pretty clear this morning, really even from the

petitioners own direct testimony, that there's a continuum of non-durum wheats here. And the principle vertical factor that defines that continuum is the protein level of hard red spring, hard red winter, indeed of all of the non-durum wheats.

Now, hard red spring and hard red winter are neighbors. They're adjacent and an overlapping classes of wheat on the non-durum spectrum. If you look at Exhibit 1, which is attached to this, this just shows you the distribution of protein levels between hard red spring and hard red winter over a five-year period. You can see that they have a very high degree of overlap, especially in the 12 to 14 percent protein range. Clearly, there is no clear dividing line here with respect to protein between these two classes of hard wheat.

Secondly, and again this came out in the testimony this morning, it is quite clear that the relative protein differentials between hard red spring and hard red winter are probably the most important element in deriving price differentials between the two. If you look at Exhibit 2, for example, and again we touched upon this this morning, you can see quite clearly in the period 1996 to the most recent crop year, the current crop year as a matter of fact, that the -- in effect, the protein premium between hard red winter and hard red -- and in this case, dark northern

spring, moves in direct relationship to their relative protein contents. So, this is principally a continuum that is defined vertically by protein and that is borne out by the price.

But, I think the best evidence of this is evidence indeed that petitioners put in to some of their petition questionnaire responses. Contrary to their interpretation of the very same data that we are looking at, the prices of the two class -- two classes of wheat, at the same protein level, are indistinguishable. And if you look at Exhibit 3, Exhibit 3 shows you how the Kansas hard red winter 13 percent price compares to the Minneapolis 13 percent DNS price over the POI. I challenge you to tell me which one has the premium here. Sometimes one is up and the other is down, and vice versa. There is no clear pattern to which of these have the higher price.

I think even more compelling evidence of that, however, is the next chart, Exhibit 4. Here, we have adjusted for potential differences in transportation costs, which you would get in comparing Minneapolis to Kansas prices. Here, if you look at the prices at the same place, these are northwest coast delivery prices, again, there is very clearly no premium between the two classes of hard wheat at the same protein level. This is going all the way back to 1991. Sometimes hard red winter is higher;

sometimes DNS is higher; no clear pattern. So, I think that, you know, just from a strict price perspective, that says a lot about what the domestic like product here is.

But, let's look also at the Commission's past investigations. In 1994, the Commission looked at this in the context of a Section 22 investigation. It found in that report that, "there is a high degree of substitution between HRS and HRW, depending on the protein levels." Figure 1 of that report shows, in effect, the non-durum wheat continuum and its relationship to protein levels and uses; no clear dividing line. In 2000, in the Section 332 report, again the same finding borne out by interview and questionnaire responses.

I think another good way of looking at this is to pick up any USDA publication that discusses wheat: Wheat Yearbook, Wheat Outlook. You just pick up any one at random, thumb through it, and you realize that in their analysis of these two products, it's very clear how interchangeable and substitutable they are. For example, in Wheat Yearbook 2001, sharply reduced hard red winter production will lead to a higher proportion of hard red spring use by bread makers compared with the previous years. And you pick up the next year, Wheat Yearbook 2002, food use of the hard red spring is projected down, because the improved quality of this year's HRW crop reduced the

substitution of HRS for HRW in bread-making. One goes up, one goes down. It is the same year after year after year.

Indeed, if you go back to the 1998 Wheat Yearbook, two USDA economists did a study of the cross price elasticity between hard red spring and hard red winter and found that it was .746. This means that if the price of hard red spring rises by 10 percent, demand for hard red winter will rise by seven-and-a-half percent. That is a very high degree of substitution. Interestingly, petitioners submitted this evidence in their 2000 332 pre-hearing brief and this cross price elasticity figure was cited by the Commission then.

Another interesting piece of evidence is petitioners own economists. In a 1999 study of the proposed North Dakota wheat pool, Wan Ku from North Dakota State University, whom petitioners have cited in their submission now, referred to North Dakota's "market share in the U.S. hard wheat industry" and demonstrated "the high degree of substitution between HRS and HRW wheat. Again, it's clear as day, every economists in this field understands that these two prices -- that these two products are -- they're just a variation of the same thing, moving along a continuum.

I think that is in substantial part, you know, the analysis here. But, if you just do even a cursory

examination of the Commission's six factor domestic like product test on the next page, again, I think it becomes clearly that these are a single like product.

And I want to focus here on just one point. They have made a lot of -- they put a lot of significance on alleged "quality differences" in the protein. It's not just about the protein level, there's some other inherent characteristic of hard red spring protein that gives it different baking and different mixing characteristics. Exhibits 5 through 7, attached here, just go through three of those factors quickly.

Our viewgraph results, this is basically a test of mixing strength, you can see, you know, no clear dividing line as you move between the hard red winter and hard red spring protein levels. Some years, it's higher than others. Two-thousand-and-one, for example, it's fairly flat; again, no clear dividing line.

The next one, absorption rates, you get all kinds of things going on. For example, in 1998, you had the anomaly that in the hard red winter range, it was actually a little bit higher at some points. Two-thousand-and-one, it's pretty flat and 2000, hard red spring was higher. There's no clear pattern here, in these characteristics.

Lastly, the stability of HRS and HRW by protein content, again, all kinds of variation, but the basic story

is, you cannot clearly divide these two classes of wheat by reference to the very characteristics that they have identified as the defining characteristics that separate hard red spring from hard red winter.

So, I won't go through the rest of the six factor test here, because I think it all shows pretty clearly that there's a single like product here. But, I'll just, you know, conclude by saying that this is a classic example of a continuum product. One can no more draw a line between HRS and HRW, than you can draw a line between 13 percent HRW and 12 percent HRW. It's all on a continuum, no clear dividing line.

Moreover, as Dick suggested, a like product classification of HRS and HRW is the conservative conclusion here. I mean, everything that we've said about the continuum applies with almost equal force to the entire spread of non-durum wheats, even moving into the soft wheats. It all moves along a continuum of protein and other factors.

Lastly, the Commission has had some recent decisions in the in the agricultural products directly on point with respect to domestic like products. I would suggest that the evidence in this case is even more compelling than the evidence that was before the Commission in the greenhouse tomatoes from Canada case, where the

Commission identified a quality continuum of tomatoes. Certain pasta from Italy and Turkey is very much on point, identifying the continuum of different pasta products and characteristics, finding no clear dividing line. Likewise, last year's spring table grapes from Chile and Mexico are also on point. All of this evidence is before the Commission and, in our view, compels a domestic like product finding of, at a minimum, hard red spring and hard red winter.

Thank you.

MR. CUNNINGHAM: That in mind, let's begin a short discussion of why, looking at the period of investigation, there simply is no possibility of finding affirmatively as to hard red spring imports. I would preface that by saying that even if you looked at hard red spring as a separate like product, the petitioners should be asked some hard questions about the last chart on Mr. Yeo's group there, where -- Mr. Yeo's group of charts, and you will note the price trends there and you will not how similar the price trends are of hard red spring and hard red winter. One wonders how, if imports are affecting hard red spring, but not hard red winter, which would be the case if they were separate like products, why on earth you don't have different price trends.

Okay. Turn now to the charts beginning Charts 6,

7, and 8, which are essentially designed to show you how small an impact there is, how small a relationship to the overall scheme of things that Canadian hard red spring imports are.

The first one, covering a slightly longer period than the period of investigation, shows the share of total food use of the hard red wheat category, occupied by hard red spring imports. Those are small shares. You may also note that there is no significant upward trend in that little blip up in the last year; but, in general, flat, maybe even slightly downward, depending on what you measure it from.

If you want to think about the market power, that is the effect on price of the amount of Canadian hard red spring entered into the U.S. market, perhaps a better chart is Chart No. 7, which compares the hard red spring imports to the total supply of hard red winter and hard red spring into the U.S., which includes all the production of the U.S. and the carryover. And the share is so minuscule, it's simply inconceivable it could have any price impact, as we will show you; in fact, it does not.

The last chart simply to show that it doesn't get much better for them, if you look only at hard red spring as a separate like product and look at it on the basis of shares of total supply. Those are still awfully small

shares and no discernible trend.

Speaking of trends, let's go to imports and let's go to prices, and those are portrayed in Chart No. 9. Once again, we see, as we saw in the earlier chart, there is no declining trend of HRS prices in the United States market over the period of investigation. That line is flat to slightly up. There is a declining trend in imports and we've drawn the trend line there to show you that.

The final thing I would say to you about that chart is that I defy you to draw a correlation between the monthly import volumes and the monthly prices. In some cases, when imports go up, prices go up; when imports go down, prices go down. In other case, when imports go up, prices go down. There just simply is no consistent, even remotely consistent cause and effect relationship there.

Let me turn now to Chart 9(a), which is the chart I asked you to insert there, and these folks have talked a lot about acreage as an indicator of injury. Certainly, that is not the case in hard red spring, and the acreage throughout the period of investigation planted in hard red spring has risen sharply. Now, they have an explanation for that. They say, aw, the terrible impact on -- of imports on durum has impelled people, farmers to shift to hard red spring. Put aside for the moment that that pretty well guarantees that you're looking at hard red spring as not

impacted and hard red spring, as a separate like product, should be the subject of a separate negative determination under their theory.

But come back to that. There are other factors that influence these plantings. We're going to talk about them a little more in a minute. But, in particular, at the beginning of this period, there was a very substantial scab infection problem in durum, which greatly reduced durum planting at the beginning of this period shifted over, under their theory, to hard red spring. That's the kind of causation that these people don't want you to think about, in terms of shifting of acreage from one wheat crop to another. And I'll get to that in more detail in just a moment.

Finally, on hard red spring, look at your underselling data. You will find the underselling data not to be underselling data. You'll find it to be predominantly overselling data.

In short, looked at the way they want you to look at it -- well, they sort of want you to look at it this way, over the period of investigation, there is no basis for an affirmative case. All the trends go in the wrong direction. The volume of imports of hard red spring is too minuscule to have an impact on the hard red spring, hard red wheat market. There just isn't any case here.

Let's turn to durum. Now, we've put the same -- the same charts up here on percentage of total food use and shares of total durum supply. Two points about these charts. First, if you look at the percentage of total food use for the percentage of total supply, you don't find significant trends. You do find a blip up in 2001-2002 that we're going to get to in just a minute. But, secondly, if you look at Chart No. 11, you will find small percentages, small percentages that don't conform with their view that the power of Canadian imports in the durum market is such as to have dramatic effects on price.

Now, let's come to the chart that I think is the most significant chart for the durum case, because the durum case, I submit to you, is -- viewed over the POI as a whole, is a causal link case, and there is no causal link demonstrably. As we talked about a moment ago, the one place where there is an upward trend, and they milk it for all its worth, of durum imports is in the crop year 2001-2002.

If that is the case, then that would have depressed the prices of 2001-2002, right? Well, wrong. If you look at the chart here, the most impressive part of this is that if you looked at those figures where the price -- where the volume increase occurs, over the last crop year, look at those bars and look atop what's happening to the

price when the volume is increasing, the price is going straight up. Imports of durum are not causing injury, even in the year when the imports increased.

There are other reasons for U.S. producers' problems with durum and for the increase in imports that have nothing to do with price. And if you'll turn to the next page, that page is taken from the Matzen & Koos study, Exhibit I38 to the petition. You should read the text here. It's dramatic. It's quite clear. It states something that everybody in this business knows, namely that there are problems and increasing problems with durum quality in the U.S. market.

If you look at the chart, it couldn't be more dramatic. Starting in 1992 and continuing on down, durum quality has just fallen dramatically. Listen to what the millers have to say later on here. They'd love to buy U.S. durum, but they -- and they do buy a lot of U.S. durum, but they need Canadian durum, because of the declining quality of U.S. durum.

Now, let me, also, advert, at this point, to two other factors. First, the U.S. crop insurance program has a significant effect in certain periods on U.S. plantings and on what you plant. In most periods, it's not a massive effect; but, at times, it gets out of joint and it does. It has tended to favor other crops than wheat until the recent

wheat bill, when they made it -- recent farm bill passed this year, when they made a specific attempt to correct that.

But, secondly, in 1999, there was a -- there was an anomaly in the crop insurance, which is discussed in detail in an article, which we will -- I've got here somewhere -- we will put in our post-hearing brief, a USDA article. And I'll read you one excerpt from it. "According to the National Agriculture Statistics Service, 1999 planted durum acreage in North Dakota, which accounts for over 75 percent of U.S. durum production, increased 450,000 acres over the 1998 total of 3.0 million acres, in spite of the fact that durum prices were five year lows, because of an anomalous favorable to durum crop insurance program that year." If you look at their understanding of the shift from durum acreage to hard spring acreage, that they try to pin all on import pressures, there is another pressure that explains that kind of shift.

Where are we, then? We are at a place where I think we can make a definitive conclusion that look at during the period of investigation, there is no case here. The trends are in the wrong direction for everything except the one year of increase in durum imports in crop year 2001-2002. And demonstrably, that was not an injurious increase, because prices rose that year and have continued to rise

since then on durum.

Let me make two final comments now before turning very briefly to threat. First, don't forget the substantial portion of U.S. production that goes to exports. Mr. Sumner is going to discuss that, bu let me say two things. First, that has an effect on any analysis of farmers' profits. If farmers are selling as much as 40 or 50 percent of their wheat destined for export and you do an analysis that doesn't factor in the performance of the export portion of their operations, then you don't know what is affecting their bottom line profits.

Secondly, the petitioners cite the Matzen & Koos study, from which I just gave you an excerpt there, for the proposition that year on year, increases or decreases in Canadian imports, in both hard red spring and in durum, produce certain changes in the price; that is the price would have been higher than it otherwise was if imports fell, it would have been lower than it otherwise was if imports increased, okay.

You can't make that analysis without considering exports, because the -- because, if imports decreased, it is perfectly, to be expected, that U.S. production that had gone to exports would be shifted back to the U.S. market and vice -- if imports declined, vice versa. Okay. Did I do that right? If imports increased, then less would be

exported -- or that more would be exported. If imports declined, then less would be exported. I get to this point and I start to mix these things up.

My other comment is more fundamental. I said at the outset that this case was an even weaker one than cold-rolled steel. Here, the petitioners are unable to show current injury, can't even show import caused injury during the earlier part of the period of investigation. The more you listen to them, the more it's clear their concern really is ancient history. Their price decline evidence relates to the period 1996-98, entirely before the period of investigation. See their petition at pages 51 to 52.

As to import increases, they would have you look all the way back to 1989. And the Koos computation of farmers' income loss is based on comparing each year's import volume with the level of imports in the 1989-90 crop year. The more you listen to and read their arguments, the clearer it is that their real problem is that the U.S. Canada removed barriers to wheat trade back with the Canada-US pre-trade agreement. Wheat imports did rose to a level reflecting that absence of barriers and these fellows, the domestic petitioners here, understandably would like to reverse that. But, that's not the function of the antidumping law. That has nothing to do with this period of investigation. It has nothing to do with dumping. It has

nothing to do with subsidization.

My last very brief point is that there is no threat here. They don't even argue threat seriously. Look at the USDA forecast for the forthcoming crop year. Clearly, things are going to get better. Look at all the press, and we'll give you a lot of press reports in our post-hearing brief about how there's tremendous demand for U.S. wheat, both hard red spring and durum. Clearly, there's no import caused injury for the next year. That, in itself, refutes any claim of threat that is imminent within the Commission's guidelines.

But even worse, there's not one iota of evidence in here about what would will happen in the following crop year, the 2003-2004 year. There is just nothing adduced. There's nothing on the record. In short, there's no evidence of any threat here and that is just not an issue in this case.

Let me turn now, if I may, to Dan Sumner.

MR. SUMNER: Thanks. I'm Daniel Sumner. I'm Director of the University of California Agricultural Issues Center and I'm the Frank Buck professor in the Department of Agriculture and Resource Economics at UC Davis. Previously, I was here in Washington as Assistant Secretary for Economics at the U.S. Department of Agriculture, where I was responsible for the work of the National Agricultural

Statistics Service and the Economic Research Service, which we've already heard a lot about this morning, and other agencies, and for economic policy counsel to the Secretary of Agriculture.

I welcome the opportunity this morning to discuss how U.S. and global wheat markets function and why an appreciation of the implications of the global nature of trade in wheat is critical to properly evaluating the petitioners' allegations. But before reviewing these economic points, let me endorse strongly the importance of the data and discussion just presented by Mr. Cunningham. In particular, he has shown that recent data simply do not support the claim that imports from Canada have harmed the economic position of the U.S. wheat industry.

Let me turn to four main points about the global market. First, we all know wheat is traded in a world market. Prices of the various wheats, including hard red wheats and durum, move together around the world, because of market integration. In short, balancing demands in supplies of wheat globally directly determine the prices on markets in the U.S. and abroad. It is these market prices that determine prices faced by farmers of the United States. This is a view -- this view of the world wheat market is utterly conventional. It's universally accepted among academic and government specialists outside these

proceedings. And even the petitioners emphasize these global connections in their 301 petition and in Mr. Wechsler's comments just a few moments ago.

Oddly, the charts provided by Mr. Fisher, however, seem to suggest that wheat prices in the United States may be understood by looking at the U.S. internal situation, while ignoring these global markets. As background, I've submitted a chart that shows the world wheat prices moving together, U.S.-Canadian wheat prices together with a sample of others. This is the standard chart out of the USDA's Wheat Yearbook.

The second point is that the U.S. and Canada are both important wheat suppliers in the international trade market. We've heard this. It's vitally important. Other major traders or exporters are Argentina and Australia. Russia and the EU also export wheat. But even more significant in establishing the global supply and demand balance is the influence of major suppliers of wheat in durum produced in countries around the world for consumption at home, in countries such as China and India; that is, U.S. wheat exports, say, for example, to China, compete directly with wheat produced in China. China is the world's largest wheat producer after all and a major importer. Furthermore, the integration of global -- of the global wheat market has increased in recent years with the gradual reduction of

trade barriers.

The other chart I have for you is a pie chart. It shows that the small share of U.S. and Canadian -- the small U.S. and Canadian share of world production for wheat, that's in the lighter colored bands, it also identifies the very small sliver accounted for by Canadian exports to the United States, a share so small that it's simply implausible that it drives wheat prices for the United States and the world.

Third, U.S. hard red and durum wheat producers export upwards to half their crop. The Commission, of course, and we've heard this just a few moments ago, cannot ignore half the earnings of U.S. like product industry and the disposition of half the crop. When one sees wheat in a field in North Dakota, it's impossible to know where in the world that wheat will be milled, in the United States or in one of the numerous importing countries.

The United States -- the United States wheat is a premier successful export industry. In this respect, the like product industries the Commission has before it contrast sharply with the vast majorities of industries in antidumping or CVD cases. That America's wheat producers are tied inextricably to a global wheat market is a condition of competition that the Commission must consider fully in its analysis. Most U.S. industries identified in

other Title VII cases are strictly import substitution industries.

Fourth, because of integration of world markets, even if the alleged subsidies in that alleged less than normal -- less than normal value sales resulted in increased volumes of hard red spring and durum being sold in the United States, the effect on wheat farmers would still be negligible. Any increase in Canadian sales within the United States would reflect diversion in sales that Canada currently makes in other markets around the world. As a result of this diversion, the rest of the world outside of North America would increase its demand for U.S. produced durum and hard red wheats and U.S. produced wheats will move to these markets. U.S. exports will increase and the worldwide market equilibrium is reestablished. Since global supply and demand remains essentially unchanged, the market clears at its original price, which is another way of saying that U.S. farmers are left no less -- no worse off. The effect on their total sales and prices is negligible.

In Exhibit 113 of the petition, the petitioner submitted a 1999 USDA study, in which they replied. The study is entitled "U.S.-Canadian wheat trade, the intersection of geography and economics." And I want to quote just briefly from that study. It says, "The volume of U.S. wheat imports" -- implicitly from Canada, of course --

"or the change in the volume significantly overstates associated shocks to U.S. markets, because Canadian wheat shipped to the U.S. is no longer available to third countries. As third countries seek alternative sources, demand for U.S. exports increases, partially offsetting the impact of imports. With the U.S. exporting half of its production and Canada exporting nearly 80 percent, world trade will continue to be the major source of shocks to the North American wheat sector and North America wheat prices will continue to depend chiefly on world supply and demand." This is a statement that captures the consensus view of how market mechanisms equilibrate the world market for wheat.

Now, let me mention very briefly two additional factors that are important for understanding this case. First, I want to reenforce the compelling evidence presented by Mr. Yeo. As we have heard, mills can blend a wide variety of wheats in various proportions and recipes, to achieve final flour characteristics. They do this all the time, thus tightly linking the markets around the world for a wide variety of wheats. In fact, based on conversations with analysts at the USDA and elsewhere, this is exactly why the USDA -- neither the USDA nor anyone else breaks out wheat production outside of the United States by class, apart from durum. The global wheat -- in the global wheat market, it doesn't consider or even report data by classes

as defined in the United States, because it's simply not useful for market purposes.

Finally, the petitioners have tried to claim that a decline in acreage planted wheat in North Dakota somehow points towards injury. However, farmers switch crops readily, we've heard a lot about that already this morning, sometimes just before planting based on relative anticipated profits and other factors. Land that is not planted wheat is not left idle.

The analogy with plant capacity in a manufacturing firm or underutilization of plant capacity simply is not true. A significant shift of land from wheat is accounted for by, in recent times, an enhanced profitability of soybeans and other crops, and much of this is due to added subsidy for soybeans. That soybeans might appear more profitable and adduce farmers to shift land of soybean production away for wheat -- away from wheat says nothing about injury that wheat farmers are suffering, and much less about whether the imports from Canada are causing that injury. Indeed, North Dakota land prices have risen steadily for a decade, reflecting improved economic prospects for the North Dakota crop producers. To interpret acreage over time, the Commission will have to examine these other crops that compete on a year-to-year basis for land use.

Thank you.

MR. CUNNINGHAM: Thank you, Mr. Featherstone, for bearing with us for a moment there.

MR. FEATHERSTONE: Thank you, Mr. Cunningham, and to all the witnesses for your presentations. I know some of you have planes to catch, so what our plan here will be to conclude the statements from the North America Millers Association and then we'll do questioning.

But before then, let me make sure we've got our record straight with respect to the exhibits. We will accept, Mr. Cunningham, your group, eleven pages of charts, plus additional Chart 9(a) as Collective Exhibit 3.

(The documents referred to were marked for identification as Collective Conference Exhibit 3, and were received in evidence.)

MR. FEATHERSTONE: Then, we'll exhibit, Mr. Yeo, your group of charts, eight exhibits, comparing hard red spring and hard red winter, as Collective Exhibit 4.

(The documents referred to were marked for identification as Collective Conference Exhibit 4, and were received in evidence.)

MR. FEATHERSTONE: And in connection with that, I noted on Exhibits 2 and 3, there's an abbreviation in the title, DNS. What did that stand for?

MR. YEO: This, here, would stand for dark northern spring.

MR. FEATHERSTONE: Dark northern spring, okay. Thank you. You probably said that and I messed it up. I apologize. And then, Mr. Sumner, your two charts, the domestic and foreign wheat index, we'll take as Exhibit 5, and then the pie chart as Conference Exhibit 6.

(The documents referred to were marked for identification as Collective Conference Exhibit 5 and 6, respectively, and were received in evidence.)

MR. FEATHERSTONE: And if the group from the North American Millers Association can come forward now, we'll take that testimony. Thank you.

MR. CUNNINGHAM: While they're coming up, I just want to say, I'm really proud of myself that I went all through this thing and never once slipped and interpreted HRS to mean hot-rolled steel.

MR. DIEHL: You did say hot-rolled spring, at one point.

MR. FEATHERSTONE: While we're switching places, let me just also mention one other possible concern, and that is that a number of these exhibits have been in color, which are very dramatic and they're appreciated by us. I'm not sure how well they're going to copy as attachments to the transcript. So, you may want to include some of them, at least, with your briefs, as well.

(Pause.)

MR. FEATHERSTONE: Welcome, Mr. Marten. Please be seated.

MR. MARTEN: Thank you. It's a pleasure. My name is Randy Marten. I'm a Vice President for Miller Milling Company, based in Minneapolis, and I'll take the opportunity to introduce my colleagues in a moment.

First of all, North American Milling Association, NAMA, represents 43 companies operating 167 wheat, corn, oat, and rye mills in 38 states and 152 cities. The aggregate production of those mills is 160 million pounds daily. And to put that into a visual perspective, that would be roughly 300 -- would make 300 million loaves of bread, similar to what's sitting over there. And this represents about 90 percent of the total U.S. milling capacity.

I will be presenting testimony regarding hard red spring wheat. And to my right, David Potter, Executive Vice

President, American Italian Pasta Company, Kansas City, will be addressing durum. And others participating in the question and answer portion of our session will be John Miller, President, Miller Milling, Minneapolis; Jim Meyer, Executive Vice President, Italgrani, based in St. Louis; and, also, lending their expertise this afternoon will be Greg Viers, Wheat Purchasing Manager for Verilla America, Ames, Iowa; and Glenn Zearfoss, Vice President of Logistics, New World Pasta, Harrisburg, Pennsylvania.

Just briefly, Miller Milling Company is a privately owned company. It was founded in 1985 by John and a number of partners. We have mills -- three mills in the United States: one in Winchester, Virginia, about 90 miles from here; Fresno, California; and the State of Senora, Mexico, a joint venture with a pasta company there. As a matter of background and from the perspective from which I speak, and I was born and raised on a grain and livestock farm in Illinois, still have a commercial non-working interest in that farm. And in my career, I've had the opportunity to be involved in grain merchandising, transportation, spent 10 years as -- in charge of purchasing for the second largest baking company in the U.S., and most recently have been involved in the flour milling business; so, bring a bit of a diversity.

I want to just start out talking about a topic

that certainly has been on the table in front of us today and that is the uses of hard red spring wheat. Hard red spring wheat essentially has two definable uses. One is as a product that is used to make a specific bread product, and that was described this morning and some examples are over there; in terms of specific hard rolls, buns, Italian products, Hoagies would be made almost exclusively out of hard red spring.

The other use of hard red spring is as a blending wheat, and it is blended for two reasons primarily. One is to meet the protein requirement that a particular customer specification may have and the second may be by request, in that they feel there are specific quality parameters that are brought about by that. But the predominant one is to meet protein.

And I don't have this as a formal exhibit, so if you'll kind of work with me on this, to give you an idea of how the blending works for millers working with customers, if you start with a blank piece of paper and write 11.4 percent protein in the middle of the page, and that is essentially an average protein of flour that a pan bread baker would like to receive to make a standard white bread -- white pan bread loaf of bread.

Now, to make that in 2001, and in the upper left-hand corner, if you'll write 2001 year, that's when the hard

red winter crop was harvested, and write 12 percent under that, that is the percent of the wheat that was available to us in Winchester, Virginia, that was harvested in 2001 and been available essentially for the last crop year. Now, if you subtract 1.1 from that, that will be 12 percent less 1.1, that will give you 10.9. That is the differential between wheat to flour. So, when we take a 12 percent wheat, we get a 10.9 percent flour.

Our customers require 11.4. So, it was necessary for us to add spring wheat to that, in order to get up to the customer specification.

Now, up on the right-hand side, you'll write 2002 and under that, write 12.5. And that's the protein that's available to us this year out of the Kansas, Nebraska crop, in our case, coming over the Chicago gateway going to Winchester. Again, subtract 1.1 and you'll come up with 11.4, which means that in the majority of our bread customers, we are able to provide them with the flour protein that they require with 100 percent. So, in 2001 and in previous years, where the average protein is averaged 12 or less, we have used any number of percentages of spring winter. It might be 60 percent winter, 40 percent spring. It might be 80-20, depending on the individual customer's requirements and the protein available in that crop year.

This year, we are using almost exclusively winter

wheat to provide that. So, a situation of practical substitutability, that is certainly existing in our mill and I think that's also consistent with that's going on in the industry.

Let's address very briefly what does a baker want, what do they define as quality. It can be simply defined in two ways. One is what works. They simply want a flour that will assist them or allow them to provide the product, to produce the product that they are in the business of making, whether it's white pan bread or variety breads, Hoagie rolls, whatever.

The second is consistency. And having been a baker and now being on the other side and involved in sales, I am constantly hammered with sort of an analogy that bakers use, is I don't care what the quality of the flour you give me, just make sure it's consistent. And the reason is, they're operating mixers that have capacity for 800 to 1,000 pounds of flour that's then mixed with water and other ingredients. And they are completing the mix on each of these mixers anywhere from six to seven times an hour. And so, they don't have the ability to adapt to a constantly changing flour. So, they're looking for a high degree of consistency from millers, in providing that flour to them. They define consistency as mix time being constant and absorption being constant, so they can mix it the same

number of minutes and they can add the same amount of water each time on these doughs six or seven times an hour; in some cases, repeated 24 hours a day.

So, why do we and other millers buy Canadian wheat? Again, to be simplified into two reasons. One is customer perception. We, in fact, get requests for the use of Canadian wheat. And I will admit that in some cases, there is perception of Canadian wheat having qualities that may be reality, may be more perceived; but that is, in fact, the case. So, we buy Canadian wheat to meet our customer's request.

The second is, in my mind, a higher degree of consistency that is delivered and allows us to meet what our customers are continuously telling about providing them a consistent product.

And I'd like to conclude with an item that was the topic in earlier conversation regarding the use of glutton. And, again, from a baking perspective, to maybe provide some insight into that, glutton is utilized primarily for the reason that most bakeries have a limited amount of flour storage and can really only take one flour. As I've described here, they may take an 11.4 flour. But, they may be making products, such as hamburger buns, or hot dogs, or other variety breads, that require -- or they would like to have a higher protein flour, but they don't have the bin

capability to take those additional flours. And so what they do is utilize -- glutton, to supplement the protein for those specific products that they wish to make. So, they might choose to use different flours, but the practical side of their bakery does not allow that, and that's the gap that -- glutton complain.

Lastly, I'd just like to say that with a lot of years of experience and, particularly, the last few buying hard red spring wheat, we bought a lot of different wheats, but, at no time, has there been a situation where I have been offered wheat at a discount to what I consider to be the prevailing market by Canada and, in fact, on several occasions, have willingly paid a premium, because of the perception, certainly it being driven by the -- our ultimate baking customer, but also the perception that the consistency was there and/or trying to meet other specific quality parameters.

So, gentlemen, thank you for your time and Dave Potter will now address the durum aspect from a milling perspective.

MR. POTTER: Good afternoon. My name is Dave Potter. I'm an Executive Vice President at American Italian Pasta Company, more frequently known as AIPC. We make about 11 different brands of pasta. There's a small sampling of it. We, also, produce nearly 60 store labels across the

country. Additionally, we're involved in food service, a segment of the market, as well as industrial ingredient, where it might be used in products such as Kraft or General Mills that knead pasta into some of their products.

We have four plants: in Missouri, South Carolina, Wisconsin, and soon in Arizona. We have a fifth in Italy. Combined, our company has nearly a billion pounds of annual capacity. I, personally, buy the durum wheat for our company and I have done so now, this is my tenth year. We have integrated milling operations with our pasta facilities. So, we value the knowledge and the quality of the durum wheat that goes into the process, as it relates to the economics, as it relates to the quality of the pasta.

I'm also the current chairman of the Durum Industry Advisory Committee. I, personally, buy close to 20 million bushels of better milling quality durum each year.

Collectively with me here today is really the strongest outpouring of support. In fact, we have four of the top five, in terms of size, pasta manufacturers in the country represented today, which represents more than half of the total pasta production in the U.S., probably closer to 90 percent of the retail branded business. And with our milling partners, both independent and integrated millers, we have -- we represent today probably 80 percent of the total durum milling capacity in the industry.

I'll just point out, the reason I elaborate on that is this is probably the single issue this industry has agreed on in the 10 years I've been involved in it. So, that's how supportive we are. And, obviously, on short notice, everybody dropped everything and came running.

Our message today is clear. The U.S. does not produce enough quality durum to support our needs and the other needs of the industry, that being export and I'll elaborate on that in a little bit.

Second point is, we absolutely need Canadian durum. We buy for quality when we go to Canada and Canad, in turn, is not dumping those values. We're here to tell you this.

I've been around for 10 years, as I said, and it seems like there's been an annual trade issue and a petition against Canada. And what we see is a billion points of data shaked and baked and presented in different ways on all types of theoretical, possible scenarios of causation. And we look at it and we say, hey, we're not economists. We're the experts of the users. We know what's really going on out there. We're pragmatic. We needed the bushels yesterday grind, we're grinding them right now, and we're going to need them tomorrow and for the whole next year. So, our intent is simply to drive home those points and hopefully set the record straight on what's really happening

in the durum industry in the U.S. and, more broadly, in North America.

If I could draw your attention to the graphs that I handed out. The first graph here -- I guess, you know, I'm kind of simple here. I'm not an economist, but I do like graphs. And I look at the imports in Canada, when I hear these claims of record Canadian imports, put it in context of the U.S. exports and you can see here that year after year, we export anywhere from two to five times as much of what's imported, okay.

I'll contrast that with our industry. We're an extremely competitive industry. I haven't even met some of these guys. These are fierce competitors I've just met today, some of them, okay. For every five or six parts of imported pasta, there's one part of exported pasta, okay. That's the intensity of our industry. It's the exact opposite of this scenario.

If you'll turn to the next page, in a typical supply and demand equation, there's, of course, all kinds of things going on and sometimes numbers are forced and whatnot. I'd like to look at it and just say, year over year, how much U.S. durum has been available to the industry and to the different uses for the industry. So, the bottom number is the beginning U.S. inventory, the carryover from the prior year, stacked on top of that is production. So,

each of those years, how much was available to do with whatever, okay.

But even with the "record Canadian imports" that you don't see here directly and the best efforts in North Dakota and other areas of the country that grow more durum, sometimes, we just had repeated quality issues. Despite the best efforts and the Canadian imports, we see this decline in carry out stocks, which is very concerning to us.

If you turn the page to the third graph, here, if you go to the right side, just talk about the typical needs. To me, this is so easy to understand. I'm not sure why we keep getting everything twisted around. If the mills need and the mills do need about 70 million bushels of good quality durum -- the export program in the U.S., we apparently like to export about 50. That's pretty typical. It can be down as low as 35 or 40. It's been over 60, as I showed on the first page. Carryover, you have to have a carryover in every commodity. So, these notions I hear about, well, you didn't add in the carryover. Well, you need to have a carryover. There's a reason for a carryover. It's security. It's security of your food supply. On top of that, the producers need some seed to grow the next crop and, invariably, in the quality, you're going to have some that goes out as feed quality, at the very bottom of the totem pole.

So, then you compare with what's available each of the years and you can see each and every year, there's a pretty significant gap. Where is that gap -- where's it -- how is that going to be filled? It must be imports. We clearly need the imports at the macro level just to cover these gaps.

Now, onto the quality. If you'll open those little quality -- the little grain deals there. I like a little bit of show and tell. I'm not going to make you all grain experts here today, but there's three fairly distinct grades there. Then, if you look at the graph, you can see the red line. That's just what the U.S. mills need, if you recall, from what we just talked about. The stacked bar here is from the North Dakota Wheat Commission's quality survey. This is what they grew last year, broken out, stratified by quality.

You can see the one hard amber durum. There's five grades. You've heard a little bit about that today. The top would be number one. Only 32 percent of the crop last year, 21 million bushels, met that grade, okay. That's the nice pretty one there on the left, nice plump kernels, notice the color, nice golden color. It's going to make some real nice pasta. It's consistently sized. There's a lack of damage. That will mill tremendously and make beautiful pasta. That's the pasta you want to eat, okay.

The second category, how low do we have to go to get enough to satisfy our needs? Well, if you went down to two hard amber durum, you'd pick up another 11 million bushels. But, if you went down to three hard amber durum, which is represented in the middle -- the middle of your sample there, you'd pick up another 15. Now, we're all the way up to 47 million, compared to the 70 that we need for the industry.

What the North Dakota Wheat Commission is suggesting is that we use everything, okay, which go all the way over to the right side now, take a look at that. And I'd like to ask each of you, is that the pasta you'd like me to make for dinner for you tonight, because I don't believe it is.

Additionally, in the bottom, the seven and 21 percent, so 28 percent, the bottom 19 million bushels that were produced last year had an incredibly high level of vomitoxin. We kind of skirted over this fusarium issue. It's called fusarium heblight, also known as scab. And if you have scab damaged kernels, you're going to create vomitoxin. There are very high levels of vomitoxin in each of the last two years. So, again, we refer to this carryover stock to make it through to the next year. How much of the carryover stock is in the lower grades that has the vomitoxin? Vomitoxin is limited by the FDA to one part

per million for food -- for food products; higher for byproducts and whatnot going to mill feed. But, that -- there's a limit there. So, I don't suggest anybody nibble on any of that on the right side at all. But, that's what we're faced with.

Also, one other thing I'd like to point out and I've heard before in some of the Q&As, on the North Dakota Wheat Commission's website and whatnot, that they refer to, we're not buying quality from Canada. In fact, over 50 percent of it was not the top milling quality. Well, let me just put that apples to apples comparison. What they're equating it to is the one hard amber durums, okay. So, that's the measure. They only grew 21 million bushels, if that's the criteria last year.

Canada, if I can continue -- you know, I can't comment on what the Wheat Board activities off shores and how all that works. All we know about is really the U.S. pasta industry and we need to have that grain. When we work with the Canadian Wheat Board -- well, I say, "we," we've all agreed on it, we've talked about it, these are professional sophisticated marketers of grain. They're not giving anything away. And I've said before, if they're dumping into the U.S. market, I'm the worst damn pasta durum buyer in the country, because we've never seen values below Minneapolis values on a head-to-head comparison, never.

The fact is, we buy Canadian durum on a consistent basis. The majority of our requirements come out of the U.S. But what we've found is in four or five characteristics of quality, Canada is consistently higher, test weights, lower ash levels, less damage. You've heard about clean and consistent, less damage, less shrunken and broken, less issues in the grain, less stockage. It's very consistent. It's a very steady supply of grain, which is what we need for our markets.

What you hear a lot about is protein. That's because protein is the only quality characteristic out of North Dakota that consistently does better than Canada. It's the only one. But, in pasta, once you get to a certain minimum level, protein above that doesn't really matter. I mean, we're all chuckling when we're talking about one-tenth and two-tenths over; they're over delivering; under delivering. It's really totally inappropriate in our use for pasta making, okay.

In summary, Canada is not dumping durum wheat into the U.S. U.S. millers do buy Canadian durum for specific qualities. The U.S. industry desperately needs the Canadian durum access this year especially, because, as my quality chart showed, we have a smaller crop coming and there is many, many quality issues with it once again, and we have a very low carryover stock.

With that, I'd like to thank you for your consideration, and we're available for questions.

MR. FEATHERSTONE: Thank you, Mr. Potter and Mr. Marten for your presentations. We'll accept your collection of four graphs as Collective Conference Exhibit 7.

(The documents referred to were marked for identification as Collective Conference Exhibit 7, and received in evidence.)

MR. FEATHERSTONE: And then, if we could make room around the table, make sure everybody has got a microphone, so that we can go into the questioning.

MR. NA: This is Dong Jun Na with the Office of Investigation. Thank you for appearing and your testimonies. I understand we have a time constraint, so I'll make my questions as brief and limited as possible.

Mr. Cunningham, you mentioned the transhipment state -- transhipments of Canadian imports.

MR. CUNNINGHAM: Yes.

MR. NA: Would you be able to, in a post-conference brief, provide data on that?

MR. CUNNINGHAM: Yeah, we'll lay all that out for you, how we did the computations, where we got that data.

MR. NA: And, also, state whether the

transhipments include wheat only or also include wheat containing products, too.

MR. CUNNINGHAM: Yeah, we'll lay all that out for you.

MR. NA: Thank you. And, also, in the post-conference, please, if you would also state what provinces or areas of Canada that the CWB controls or operates with.

MR. CUNNINGHAM: Putting aside the word "controls," yes, I'll do that.

MR. NA: I'm sorry, for lack of a better word at the time. And maybe also include why the areas that are not included in the CWB are not.

MR. CUNNINGHAM: You mean what parts of Canada are not included in the CWB and why?

MR. NA: Right.

MR. CUNNINGHAM: Sure.

MR. NA: Mr. Marten, in your testimony, you mentioned that hard red spring is used for breads and also in blended wheats. Is there an approximate percentage of HRS used in blends, as opposed to exclusively just for HRS purposes?

MR. MARTEN: I'm sure that data can be extrapolated. I do not have it right now. Jim, could we try to get that or --

MR. NA: You will? Okay, thank you, very much.

MR. MARTEN: I guess I would simply add, though, there is certainly going to be a high degree of variability from year to year, based on the example I gave with the changing proteins.

MR. NA: Okay. For HRS specifically, are you trying to get protein -- a certain percentage of protein level first and then supplement it with HRW?

MR. MARTEN: No. It's starting with HRW, which is the -- if you remember the two numbers at the top, the 12 and the 12.5, that's the HRW number of which generated, then, say, a 10.9, versus the 11.4. So, you'd need to then blend a 14 or 14.5 spring with that, to elevate the protein to the customer specifications.

MR. NA: Okay. Mr. Potter, for specifically durum, do you do any blending with durum wheat -- with other wheats to durum?

MR. POTTER: Absolutely. Without divulging our trade secrets, I'm just kidding, I will tell you that because of the positive attributes in North Dakota durum, positive attributes that are fairly distinct to Canadian durum, and even in the dessert southwest, each region has positive attributes that are fairly unique, consistently year over year. Our general strategy is one of a portfolio, to source from all regions and to blend them. So, if you get -- if you blend all the positive attributes of the

different regions, we believe we get a more consistent and a higher quality product.

MR. NA: And if you would also be able to give us an approximate percentage of how much durum wheat is blended with other wheats, as --

MR. POTTER: Oh, no, no. I'm sorry.

MR. NA: I'm sorry? You don't understand --

MR. POTTER: One hundred percent durum wheat, just blend from different regions is what I was referring to.

MR. NA: Other regions; oh, I see, okay. Thank you, very much.

MR. POTTER: I don't think I understood there. Yeah, thank you.

MR. NA: Thank you. That's all the questions I have for now.

MR. DIEHL: Hello, welcome, and thank you for traveling here. I'll try to keep it short, in terms of -- in light of time constraints. It would be helpful to me to have and set out in the briefs, I'll address this to both parties, what is sort of the universe of products we're looking at. For example, Mr. Marten, when you're having us write numbers on the page, you're giving an example of a pan bread. And what I don't have a good notion of yet, of what -- what are the different numbers that would be applicable to a hearth bread, to a pizza dough, to bagels, to other

products. And if you could set out what this universe of products are, what percentage, more or less, each makes up of what's out there; and then, also, what is -- what are the protein needs for each of those different products. And you don't have to do that now, but you could have your people set that out in the briefs, unless you'd like to make a comment right now.

MR. MARTEN: Well, I certainly could give that description, but I think it would make more sense just to look at it. And the reason I used the pan bread example, it is by far the largest single item in the United States and everything else sort of pales in comparison volume wise; but, very easily can lay out the protein spectrum of products and examples along with that.

MR. DIEHL: Okay, thank you. And I think you said, Mr. Marten, that you use -- when the protein value of the HRW is high enough, that you used exclusively that for the 2002 year; is that correct?

MR. MARTEN: Yes. We have many customers right now that we are using exclusively hard red winter wheat and it is working very well in their application.

MR. DIEHL: Okay.

MR. MARTEN: That wouldn't -- and that would not have been the case necessarily a year ago.

MR. DIEHL: Okay. If Mr. Potter, or whoever is

representing Mr. Potter, could -- if you could set out in the brief more about the vomitoxin or the fusarium, whatever it is -- I'm not sure I'm using the right terminology -- when those problems existed, what years you believe those problems arose?

MR. POTTER: Well --

MR. CUNNINGHAM: Could I just --

MR. POTTER: Go ahead.

MR. CUNNINGHAM: No, you go ahead.

MR. POTTER: As has been testified earlier today, it's been an issue for many, many years and I think it was quite a bit starting back in '93 and there was a lot of -- lot of work done by the government and a cross-section team, throughout industry and government, to work on the issue. We saw it, and I may be getting my years a little confused, but I think '96 was a bit of a breakout in North Dakota for more of this vomitoxin.

We established very strict control processes and incoming grain testing on our mill back in '96. We've seen in the last two crops significant amounts, probably more than back in 1996. This year, we suspect there's less damage, but there's still a lot in the carryover, I guarantee it.

MR. CUNNINGHAM: I was just going to recommend you also pay attention to the scab. There's a study, which

we'll be giving you, that says that in the years 1998 to 2000, the scab cost farmers -- wheat farmers in the U.S. $2.7 billion over that three-year period, one billion of which was in North Dakota.

MR. DIEHL: Okay. For Mr. Marten -- I mean, for Mr. Potter, I understand that you need the Canadian durum, in order to get the high quality that you need. What did you do before the Canadian imports were available?

MR. POTTER: We're only a -- what are we, 13, 14 year-old company, first of all. So, we were in a startup mode when I showed up 10 years ago and, at the time, we bought all of our durum from Bud, Buzz, and Marvin.

MR. DIEHL: I'm sorry, from?

MR. POTTER: Bud, Buzz, and Marvin. They were three different elevators, two in North Dakota, one in Montana. At the time, we didn't need to do anything broader than that.

MR. DIEHL: Is there anybody with a longer production experience that could comment on that?

MR. ZEARFOSS: I'm with New World Pasta. We've been in the business --

MR. DIEHL: I'm sorry, could you just give your name, so that we get it on the transcript?

MR. ZEARFOSS: I'm sorry. I'm Glenn Zearfoss from New World Pasta.

MR. DIEHL: Thank you.

MR. ZEARFOSS: We've been business for 70 years and we're in a little bit different position, because we buy our flour commercially from some of the folks at this table and others. So, the source of -- the source of the product, Canada or U.S., isn't particularly important to us, but the quality is critical to us. So, we task the millers to source it from wherever they need to, to give us the product quality that we need. And, perhaps, they can speak a little bit more to that.

MR. DIEHL: Activate -- if you'll activate your microphone? Thank you.

MR. MILLER: I'm John Miller from Miller Milling Company and, sadly, my history does predate the agreement with the Canadians. And so, you know, I'll say this with some delicacy and given that it's so long ago, I don't think the repercussions will be too severe.

The expectation of pasta quality in the United States has consistently increased as the markets become more sophisticated, and it's because we've faced great pressure from Italian imports. I would say prior to the availability of Canadian wheat, there was some acceptance of lower quality wheat into the system out of a requirement. And I would say that the standards that we, as millers, were able to apply perhaps in 1985 are not standards that any of our

current customers would remotely accept.

I'd also say perhaps that -- now, I'd have to go back and look at the statistics, but some of the disease characteristics that we've experienced in the last five to 10 years, and all the reasons for that others can go into, but I think that there was less risk of that in some of those -- in those prior periods.

But, I'd say the biggest issue is that we're not able to utilize durum today and have market acceptance or be competitive. But perhaps in those years, we might have.

MR. DIEHL: Is also part of the picture that you would have consumed more of the U.S. durum production; whereas a lot is being exported now, perhaps you're keeping more of that here in the states?

MR. MILLER: I'd have to go back and look. You know, I don't recall specifically the percentages of export relative to the domestic consumption. Certainly, U.S. consumption has increased dramatically since the periods prior to access to Canadian wheat, as well. But, I -- somebody else has to give you the statistic on that.

MR. DIEHL: Okay, thank you.

MR. ZEARFOSS: Glenn Zearfoss, again, from New World. There were some years in the past when there was not enough durum available, and I'm going back to the '70s and perhaps early '80s, and, at that time, we did blend some

hard red spring with durum wheat. And it's a huge issue when you need to do that in the pasta business. What it does is it makes -- product is softer, it's stickier or starchy, not a good quality product that you'd want to put your name on. At the time, we had no choice.

What's happened since that time -- and you, also, have to change label, to say that it's not strictly semolina that's in the package. So, there's huge issues of having to do that, if we would have to do that. And you -- when we're having to do something that the rest of the world doesn't have to do, then we're also putting ourselves at risk to Italian imports and other quality product coming in.

And echoing what John Miller said, there is a significant difference in the perception of quality and the appreciation of quality in pasta products now, from when there was when we blended products back in the late '70s. And if we tried to do that now, we'd have an upheaval, consumer upheaval on our hands.

MR. DIEHL: Okay, thank you.

MR. BAIR: Excuse me?

MR. DIEHL: Yes.

MR. BAIR: I'm Jim Bair from the North American Millers Association staff. I just wanted to add to your previous question about fusarium or scab and damage problems. I just wanted to point out that, and you can get

this on your own, but U.S. Wheat Associates, which is the national export promotion branch of the wheat growers -- the petitioners, in fact, are a major contributor to their activities and major participant -- on their website, I noted yesterday data on their analysis of this year's durum crop quality. And to quote, you know, from that report, they stated that the average damage was 4.3 percent and that's above the maximum allowed in grade number two; that is to say, the average of the samples that they're looking for wouldn't even make one or two. So, if it's a bell curve, then there are things significantly lower than three. And, in fact, they reported they had damage in samples as high as 42 percent.

Well, I assure you that that wheat would be unusable for any human food and will definitely go to livestock feed. So, this is wheat that's not available to the marketplace and cannot be included as such. And that's no different from year to year. I mean, we see that in most years, there is high damage, particularly, as they say, in some of the eastern growing regions.

MR. DIEHL: Okay, thank you. Another question for Mr. Potter. I think you said that you find, in general, the Canadian durum to be a somewhat higher quality than the U.S.; did I understand you correctly?

MR. POTTER: Yes, in many regards. It really

depends on the characteristics. And I think -- again, we were talking a little bit about this as an industry, that I think the petitioners, I think other groups try to minimize or simplify what quality of durum wheat really is. And we look at 10 or 12 different characteristics between when we refer to "clean grain." Okay, maybe the protein is not here, but look how clean it is. We can all look at an official grade sheet and evaluate how well that will mill, okay.

So, you know, sometimes you just need protein; other times, you know, you're looking for a clean grain with a high test weight that has little damage and little shrunken and broken, because all those bad things go right out the back of our mill, okay. It goes through the cleaning operation and it just, fzzz, we're filling up trucks for byproducts going out the back door, at a much reduced value.

So, when I say "better," I mean, yes, it's better in many characteristics than North Dakota. North Dakota is good in other respects. But, the bottom line is, you know, they all bring positive attributes to the mill. We need it all.

MR. DIEHL: Will you pay something of a premium for the Canadian product?

MR. POTTER: Usually --

MR. DIEHL: Okay.

MR. POTTER: -- even for the same "grade." And that's the other thing that, again, is confusing and very frustrating for me, is part of the grading systems are different, okay. This very important hardness and vitreous, the H&V, also known as color. That score in the Canadian one hard amber durum grade, that can go as low as 80, okay. And in North Dakota, when we're quoting on a Minneapolis top milling or choice grain, that's typically 90 -- 88 or 90. Now, it's trying to get it down to 85. But the point is, there's this difference and you say, aha, there's the difference, okay.

But, I would contend that everyone of the millers here would take an 85 Canadian over an 88 to 90 U.S. grade, only because of the different measurement systems, okay. The Canadian Grain Commission, as they evaluate that grain, is much more stringent in the way they evaluate it. So, over time -- am I getting enough head nods here -- I think you have a consensus. I mean, so -- and then the petitioners will use that fact, that, oh, boy, they're not buying -- they're not buying quality; they're buying this lower color stuff.

So, there -- you just have to trust us. We're the users. We're the users and, you know, we grind it everyday.

MR. DIEHL: Okay. Those are my questions. Thank

you.

MR. FEATHERSTONE: Mr. Deese?

MR. DEESE: Good afternoon. Mr. Miller, Mr. Marten, Mr. Viers, thank you for responding to the Commission's questionnaire. I understand that yours is coming in, Mr. Potter. Mr. Meyer, I think we have sent you one, but you have not yet responded. So, would you please respond?

MR. MEYER: It will be there -- it will be in your offices next week.

MR. DEESE: Okay, thank you. And Mr. Zearfoss, I think you were not on our list. If you have a card or could you give me your address before you leave today?

MR. ZEARFOSS: Sure.

MR. DEESE: I just have one question really and it really goes to all of the millers. And if it would take too much time, you can respond in a post-hearing brief. But, that concerns the mechanics of how you buy wheat from the domestic industry and the Canadians. I mean, it was mentioned this morning that Canadians are able to obtain through the Wheat Board long-term contracts, but the domestic industry isn't. So, would you please comment on that aspect specifically and any other comments that you think are relevant in how you buy wheat and how it differs from the two sources?

MR. MEYER: If it's okay, I'd like to respond with respect to domestic purchases. And Italgrani has a little bit of a different perspective, I think, that my other colleagues at the table, in the sense that we're a durum miller based in St. Louis. We have a large mill there. But, apart from my colleagues here, we, also, have and own three -- actually, four grain elevators in North Dakota. We have owned and operated these elevators for the past 12 years and our strategy behind that is to be able to access the highest quality durum wheat available.

We have invested well over five million dollars over those years in acquisition and improvements and additions to those facilities. At each of those facilities, we have between 250 to 400 individual farmer customers that come into our elevator to sell us grain. We're full service elevators. We'll buy canola, flax, spring wheat, durum, all the commodities that are grown by the farmers. We have a long-term relationship with those farmers. They trust us, we trust them.

With respect specifically to durum wheat, what happens is the farmers will come in, look at the board price, which is literally on the wall, of the price of grain that the elevator wishes to pay that day. The grain sample typically comes in. The farmer will await for the grading procedure to take place. And you'll measure hard vitreous.

You'll measure moisture, protein levels, and other things, as well. You'll check for vomitoxin, to see if that is a high enough incident in the grain, because that means a substantial amount to the miller, in terms of what you can do.

The price is discussed and the farmer may sell. He may not sell. He may take that sample to several elevators. There are many different elevators. Across the state of North Dakota, there are, I believe, approximately 400 grain elevators. Some of those are independently owned. Some of those are co-op owned. Some of those are owned by larger ag concerns.

We acquired our four elevators and operate them, again, strategically because we wanted access to highest quality durum. Our elevators are located in areas that historically produce a lot of durum and a lot of high quality durum.

Getting back to the quality issue for just a second, if you look at the last two crop years, and I'm talking about the crop that was harvested in September of 2001 and the crop that's just been harvested in September of 2002, and you look at those quality characteristics, I would love to be able to buy all of that durum that my farmers can sell to me, delivered directly to my plant in St. Louis and grind it and to make flour for New World Pasta. We sell

some product to Barilla and to all of my other customers. The quality characteristics of the durum that's being produced by all of those farmers that are part of my customer base, in total, does not meet the current specifications that I need to be able to produce a semolina that I can sell to my customers.

As a result, I'll buy that durum, but it is considered, for my purposes, blending stocks. I have to find some higher quality durum to blend with this lower quality durum, in order to make specifications. And that is an absolute fact going on in North Dakota today.

There are certainly pockets in North Dakota, there are stations, there are elevators that have higher quality durum, and it depends completely on growing conditions, the conditions when the grain was harvested, and these factors are all part of it. Dave Potter, myself, and Greg Viers, we all know where those stations are. We're rapidly gathering our intelligence about where the better stations are, in terms of the higher quality wheat. Obviously, those stations are going to be very busy. We, also, gather a lot of data on which stations have the lower quality wheat, and we have to be very careful about where we buy.

MR. DEESE: You said that the grain elevator posts a board price each day. Where do they get the board price?

MR. MEYER: They're based on a number of factors.

They're feeling whether they're bullish or bearish, with respect to the future trends of market. As was discussed earlier, there is no organized futures market in durum wheat.

The elevators are inherently long, relative to their sells typically. And what I mean by that is they're buying wheat today. They don't have it sold to a third party, to a mill, for example, to Dave Potter. So, they take -- they take chances with respect to what prices they're willing to pay for grain today versus what price they will ultimately be able to sell it at come 10 days, two weeks from now, when they've gathered a trainload quantity of the grain.

They, also, have to deal with the fact that they're bringing in divergent qualities of grain constantly. Farmer A comes in and he has some very, very top quality durum. Great, I'll pay a premium price for that at the elevator. The next farmer comes in and he has some grain that on two or three attributes is rather poor. You'll pay a discount for that and the elevator will consider blending, to try to arrive at a average price that he can still make some money at the elevator, when he sells to a Dave Potter or Greg Viers or Italgrani.

MR. DEESE: And when you buy from the Canadians, how does that work?

MR. MEYER: As you know, the Canadians have a central desk. They do not lead this market. We cannot emphasize this enough, that they don't come in and undercut the pricing. They're very cognizant of what the FOB Minneapolis price is on wheat. And if Dave Potter is the dumbest durum buyer, I guess my guy is the second dumbest durum buyer. But --

MR. POTTER: Thank you.

(Laughter.)

MR. MEYER: -- they do not undercut the market. They are very, very cognizant of what's going on in the U.S.

MR. MEYER: But when you're contracting with them, you're not going around and looking at individual samples and judging the quality, I take it. And it sounds --

MR. MEYER: No, there isn't a need to, because of the consistency of the delivery of what they deliver.

MR. MEYER: So, you contract for a certain -- your contract is more specific with -- in terms of quality for the Canadian product?

MR. MEYER: Sure. There will be a specific, maybe one quad or two quad, and there will be an outline of specific what the qualities are going to be in that train. And it's very consistent that they deliver the quality that they say they're going to.

MR. POTTER: Would you like some more comments on

the mechanics of that?

MR. DEESE: Well, I think it's useful, but I don't know about time. Is that okay?

MR. FEATHERSTONE: Sure.

MR. DEESE: Okay.

MR. POTTER: Okay. When I go to the market, I need some grain. We buy in trainload quantities, going to our two big mills. And I will go around, typically, I'll make some calls. We do some business directly with North Dakota and Montana elevators. We work some in Minneapolis Grain Exchange with merchandisers. We'll work with a number of folks out in the dessert southwest and the Canadian Wheat Board. And it is convenient, certainly, to make one phone call to the Canadian Wheat Board, where you make several to the other places, but you'll ask for values. You'll ask for offers. And you'll tell them what grade you're looking for, for what time period. And you collect your information and there's a bit of a negotiation.

Unfortunately, there's not a whole lot of negotiation with the Wheat Board, because they're really on top of their game. They've looked at what their values are relative to Minneapolis, relative to other opportunities offshore. They're ver confident in their grades and the quality and the values for that particular period. And then we make our decision.

MR. MILLER: Dave and I are a little different than Jim. We don't have originating grain facilities up in North Dakota. We buy wheat from both Canada and from the United States and our process is virtually identical in both cases. We solicit offers and we specify what grade requirements we need on those offers. We go through the offers and go back to those that we think are, you know, maybe the leading candidate that day, whether it's a domestic originator or whether it's the Wheat Board. And we counterbid and we negotiate and try to reach a conclusion.

But, the process is very, very similar in purchasing between the Canadians and the U.S. for us, because we don't have originating facilities. We don't have samples that we look at. We buy trainload quantities, 50 car unit trains at the time, that sort of thing.

You asked about the distinction between offering and the deferred positions, though, I think -- which is where you were going a little bit. It is frequent -- there is a continuing trend among U.S. pasta companies, that they would like to know what the pricing of the raw material is in farther and farther periods out, partially because I think that their marketing programs and their market plans require them to have a knowledge of what their pricing is going to be in three months, in six months, in nine months out, partly because of their risk management on a commodity

like wheat. And they're continuing pressing us, as millers, to be able to give them a fixed price out into those future periods.

Unfortunately, in wheat, in durum, we don't have a futures market. I'm Chairman of the Minneapolis Grain Exchange and we've attempted twice to develop a futures market for durum and we've been unsuccessful. So, we have to look how we can off lay that risk in a cash market. And it's frequent that the -- that we're not able to solicit or achieve offers on the U.S. market and deferred positions. It's frequent that we can't do that in Canada either. But, it is also frequent that Canada is willing to offer wheat in deferred positions where we're unable to solicit an offer out of the U.S. So, it's frequent that if we're looking to buy into deferred position, that the Canadian cash market through the Wheat Board is the only offer that we have.

MR. VIERS: Could I add to that just a little bit?

MR. DEESE: Sure.

MR. VIERS: I'm Greg Viers with Barilla America. We make what we feel to be high quality pasta. We're actively buying durum in the U.S. in all the durum producing areas. The Canadian Wheat Board is -- from my perspective, has been very tough to deal with. They are at the market. They don't make the market. They, also, for forward contracting, they charge a carrying charge. Somebody made a

case earlier that there should be a value assigned to that and from what I have seen, there has been or there is a value assigned to that. There is carrying charge that is built in on forward contracts that I have made with them.

MR. DEESE: I have no further questions.

MR. PAYNE: Thank you all for testifying. I have a few questions. Mr. Potter and any of the other pasta producers or durum millers, pasta consumption in the U.S. has taken some pretty significant declines in the last three to five years, but we're not seeing comparable decline in durum imports from Canada. You speculate as to why.

MR. POTTER: Pasta consumption -- Dave Potter. Pasta consumption on the retail shelf, it can be measured in a lot of different ways. First of all, I think you need to realize which products are being made with the semolina coming out of the durum mills. Retail pasta is down probably a couple of percentage points, as it relates to these one-pound spaghetti and elbows on grocer shelves.

However, I'm in the industrial market. I'm also the general manager of our industrial markets. And in that area, if you think about frozen pasta meals, canned pasta, soup pastas, mac & cheese, microwavable products, there's actually been quite a surge in the last several years in that whole category and oftentimes people don't realize that's also pasta. But, it's in many other places in

grocery stores, we like to say. And I think -- hopefully, that answers your question. I don't think the category is quite as declining as the medium I represented to be.

Second -- so, therefore, I don't -- I'm not sure the question changes a little bit there. I just think the increase in Canadian is just what the market needs and especially on quality. Any other viewpoints there?

MR. ZEARFOSS: As you look at the market, you, also, have to look at not only the forms of pasta sold in, but where it's sold in, and there's a large amount of pasta that's now selling through channels that it didn't sell through traditionally. People are buying grocery products in mass merchandisers and Super K-Marts and many of those statistics don't always get rolled up into -- if you look at the traditional IRI and other data services, it doesn't always include all of those alternate channels. Most drugstores now have a small pasta section. So, it --

MALE SPEAKER: WalMart does.

MR. ZEARFOSS: That's right. So, it's very hard to try and -- you know, in the old days, when everything was grocery stores, it was much easier to track that total consumption. It's much harder to do that now, simply from a fragmentation of the market.

MR. CUNNINGHAM: Might I just say, as I understood what the gentlemen were saying, the demand here for going to

Canada for pasta is not a one-to-one relationship with U.S. pasta consumption, so much as it is a relationship with the availability of the adequate quality from year to year, which changes from year to year from U.S. supplies. Would that be correct, gentlemen?

MR. PAYNE: Thank you. I won't -- to follow up, you don't have to answer it now. If you want to put something in writing, that would be fine. I would just direct your attention to the Census Department survey and manufacturers data, which I am assuming would capture both the retail, the ingredient, and the mass merchant markets, and that does some fairly significant declines. And if my assumption to that is capturing all of those channels of distribution is not correct, if you could please provide that, let me know.

MR. CUNNINGHAM: And Mr. Featherstone has just said there wasn't on -- a transcript didn't catch any response to my question to you about whether, isn't it true that the demand for Canadian pasta, there isn't a one-to-one relationship with U.S. pasta consumption, but while they're a function of more of the ability to get quality here in the U.S. And it didn't get an answer of that on the --

MR. POTTER: Dave Potter replied, that is correct.

MR. PAYNE: Just a couple of questions for Mr. Cunningham. On your chart that you inserted, 9(a), the

title says, "U.S. hard red spring planted acreage." But, I noticed on the Y axis, the units there are actually in bushels. And so my question is, that upward spike, is that actually a trend in yield and production, as opposed to planted acreage?

MR. CUNNINGHAM: I'm going to ask Mr. Yeo to address that.

MR. YEO: As it was not my chart, that may be difficult.

MR. PAYNE: If you guys could comment on that.

MR. YEO: Can we get you an answer on that --

MR. CUNNINGHAM: We'll comment on that in the post-hearing brief, rather delay the matter here. But, we'll clear that up.

MR. PAYNE: Because, if the Y axis is bushels, then yield and production is something different than acreage.

MR. CUNNINGHAM: I'm always bad on the footnotes and the things like that. So, we'll clear it up.

MR. PAYNE: Two more questions for Mr. Cunningham. You comment in your initial presentation about how the price increases for the hard red spring and I think maybe durum, but definitely hard red spring, had started to climb in the 2000-2001 crop year. You don't necessarily have to give an answer now, but if you could elaborate on the possibility

that some of that price increase is a result of the Wheat Board shifting exports from the U.S. to Europe, which had a particular poor year that year, and to what extent that might be driving those trends.

MR. CUNNINGHAM: We'll inquire about that and respond to you.

MR. PAYNE: And then the last question I have gets to causation, and that is you've commented about the high prices currently, right now in August, September. There was some -- there was pretty extensive coverage in the trade press about a month ago when the Wheat Board announced that they would no longer be pursuing export contracts, because of the severity of the drought in Canada. To what extent does the fact that if the Canadian Wheat Board has all of a sudden pulled out of the market, relate as a one-to-one direct cause for those price spikes?

MR. CUNNINGHAM: We'll give you a response to that, too.

MR. FEATHERSTONE: Mr. Carpenter?

MR. CARPENTER: Thanks. I just had one question for Mr. Marten. You said in your testimony that hard red spring is used to make certain breads and also for blending. And then you said in blending, you start with hard red winter and add in hard red spring to get to the desired protein level. Is that the experience of other mills --

flour mills throughout the country or does that have anything to do with your geographic location?

MR. MARTEN: No, I think that would be consistent. Certainly, every mill is going to have a unique situation based on their location and their customer product mix. But, with the exception of a mill that might be located near a New England location or upper northeast, where you might have a high propensity of the hearth breads or the Italian rolls, I would feel comfortable that the mills in the rest of the country would use a predominance of hard red winter and add hard red spring, to achieve their protein goal.

MR. CARPENTER: Okay. Now, for the breads -- the bread products that hard red spring is preferred for, is there any blending involved, or do they just use -- do they just make flour straight from hard red spring for those particular bread products?

MR. MARTEN: It is from straight hard red spring. And if there is any distinction at all, it's that there would be some products that would require what is commonly referred to as high gluten flour and that has a lot of different meanings to a lot of different people. So, there's some degree of caution there. But, a high gluten flour is generally made from a 15 percent protein spring wheat, which would make a 13.8 or 14 percent flour. The average spring wheat that is utilized in blending is going

to be roughly a 14 to a 14.5. Now, there may be some blending between the 14, 14.5, and the 15, depending on the application, but it's all going to be 100 percent spring wheat.

MR. CARPENTER: Okay. Now, in your illustration, where you said that the typical or the average protein level required by bakeries is 11.4 percent and to get to that level, it varies from year to year, depending on the condition of the crops and so on. If -- I think in your illustration you said in 2002, you had 12.5 percent protein level for the wheat, which yielded 11.4 percent protein level for the flour. So, does that mean there was no blending necessary, no necessity to blend in the hard red spring?

MR. MARTEN: What it means is that for those customers and in those applications, 100 percent winter wheat will meet their needs. And that is, in fact, much of our experience, and that we have dramatically moved from what I described as a year ago was probably an average of a 70 percent winter, 30 percent spring blend, to achieve the protein goal, to now moving more toward 100 percent winter.

MR. CARPENTER: Okay. My final question is, this may be difficult to answer and it probably varies from year to year, but do you have any idea of what percentage of hard red spring wheat is milled into flour without blending and

what percent is blended with hard red winter?

MR. MARTEN: See, I think that was asked earlier and we were going to try to get that --

MR. CARPENTER: Okay.

MR. MARTEN: -- information.

MR. CARPENTER: Okay.

MR. MARTEN: Right.

MR. CARPENTER: And if you could -- if that varies from year to year, if you could get us an estimate for each year.

MR. MARTEN: We'll do our best.

MR. CARPENTER: I appreciate it. Thank you, very much.

MR. MARTEN: Indeed.

MR. CUNNINGHAM: Mr. Featherstone, could I add one point to the answer I gave for the question a moment ago? There are two points. One is, these are trends that -- these upward price trends in both hard red spring and durum go back quite a while. They go back for at least for a year-and-a-half. And so while there may be an additional upward increment caused by a factor like -- a recent factor, like you say, the trend is independent of that.

The second thing I would say is, to the extent that one would accept the premise that the Wheat Board withdrawing from export markets -- and I don't know whether

that means U.S. market or other export markets, we'll check on that -- but to the extent that the Wheat Board withdrawal from the market because of the drought constitutes a fundamental change in the marketplace, I think you're exactly analogous to the situation you had in cold-rolled steel.

Because, remember, cold-rolled steel, what happened was prices went up. Why? The Commission found they went up, because -- in substantial part, because imports had been reduced substantially by the 201 remedy. If imports are substantially reduced by the drought, each of those constitutes the kind of watershed even that requires the Commission to look at the condition after that, rather than going back to the previous condition, at least that would be what I would argue.

MR. FEATHERSTONE: Mr. Diehl?

MR. DIEHL: Okay. I saved a few questions for the lawyers. The millers can stay and listen, if they want. I don't know who has to catch a plane. I'm not asking anybody to leave. Mr. Cunningham, I think when you -- I think I heard you, I'm not sure, when you described Chart 3, which were volumes on hard red spring -- no, I'm sorry, I should have been talking about chart 4 which is Durham. I thought you said you wouldn't find any volume increases.

But then, I think you also said in relation to

Chart 12 that there were some volume increases in the last year for durum imports.

MR. CUNNINGHAM: In the last year clearly there are volume increases for durum crop year over crop year. What I'm saying is that those increases occurred early in the crop year. It's been relatively flat through most of the latter part of the crop year with a blip up in April. Then it has started to decline, and the forecast is for further declines.

MR. DIEHL: Okay. Thank you. The first couple charts dealt with I think what you've described as either flat prices or rising prices for durum and HRS.

MR. CUNNINGHAM: Well, durum is a pretty significantly rising trend and slightly up in HRS.

MR. DIEHL: Okay.

MR. CUNNINGHAM: Until recently when it moves up more sharply.

MR. DIEHL: All right. I'm not sure if you have addressed the argument of Petitioners that the injury and price effects were already noticeable in the market prior to this time period. If you've addressed that, could you repeat that for me?

MR. CUNNINGHAM: Well, I don't think I've ever heard of a case where the Commission looked entirely to price declines occurring entirely before the period of

investigation as to which certainly nobody is ever going to have any finding that those price declines are due to dumping or due to subsidization. There will never be any finding like this by any agency. There's no rational link between those price movements back then and any alleged present unfair practice.

Besides that, where you have for a full three-year period a stable or rising price level, it seems to me that the movements that the Commission looks at must be the movements that are relevant to the current condition of the industry, and those are the movements.

MR. DIEHL: Okay. It would be helpful if both sides would address the question you put out that you don't think there's a case where the Commission has found injury or price effects that were existent before or during the entire investigative period.

MR. CUNNINGHAM: The only declines were before.

MR. DIEHL: What I'm interested in is whether there are examples of where the Commission has found injury or significant price effects where those effects were existent during the entire period and not necessarily getting worse. If both sides could just weigh in on what you know of Commission precedent on that?

MR. CUNNINGHAM: We'll get the researchers on it.

MR. DIEHL: Thank you. For Mr. Yeo, it took me a

while to understand some of these graphs.

MR. YEO: I'm glad you understand them.

MR. DIEHL: I'm not sure I do still. On the alveograph results, the Y axis is W-ERG over GM. Do you know what that means?

MR. YEO: I believe, as I understand this, and you will appreciate that I'm a lawyer and not a miller. I believe this is a measure of resistance or strength in the mixing process. Perhaps someone can opine on this for clarity.

MR. MARTEN: That's correct.

MR. YEO: Okay.

MR. DIEHL: What is ERG?

MR. MARTEN: ERG.

MR. DIEHL: ERG? Okay.

MR. MARTEN: It's a measure of energy use.

MR. DIEHL: Okay. And GM would be grams? It is ERG over GM.

MR. YEO: What I can tell you is that this is the manner in which it's presented in the annual U.S. Wheat Associates crop survey.

MR. DIEHL: Okay.

MR. CUNNINGHAM: We'll give you an explanation of it.

MR. DIEHL: Okay. When I look at the chart, if I

take a line and I draw it at about 315 and draw it across there, it looks as if all the values for HRW would fall below that line, and all the values for HRS would fall above that line.

My question to you is I think you characterized this as showing a mixed picture, but yet there is one way to look at this that would seem to show a distinction. Could you address that?

MR. YEO: Well, I'm drawing my 315 line right now. My point was there. If you look at the protein continuum, if you look at the spread of protein, and that was my first chart, and see the degree of overlap and see how much it varies from year to year you see a pretty consistent pattern of movement of the protein spectrum.

Here I'm simply making the point that while there is variation year over year you see a similar pattern of gradation across the protein spectrum. I believe that is the case, and again maybe some of our witnesses are better positioned to answer this, but I believe it is the case that these types of characteristics are principally a function of protein and gluten content, so it's going to vary from year to year, HRW and HRS, depending on their average protein and gluten content.

There may be other characteristics that are at play here, but my point is it simply follows a continuum.

MR. DIEHL: Okay. Does anybody want to comment further on that?

MR. MARTEN: If I may just for a point of clarification? The data source is the U.S. Wheat Associates, which is principally export oriented.

The alveograph is a very commonly used tool in Europe and other parts of the world. The farinagraph is the tool that's typically used in the U.S. One of the charts referred to stability, which is an outcome of the farinagraph.

MR. DIEHL: Okay. I would just note that the same basic observation seems to be applicable to the absorption rates chart, Exhibit 6. If you draw a line at about 61.5, for three out of the four years all of the points for HRS are above all the points for HRW.

MR. YEO: Well, but you're --

MR. DIEHL: 1988 being the exception.

MR. YEO: But you're continuing to move off the protein curve, of course. Unfortunately, Wheat Associates doesn't keep its data with an overlapping protein point for this measure, for any of these quality measures, so you're continuing to move off the protein curve, so naturally it moves up a little bit between the HRW and the HRS.

MR. DIEHL: I appreciate that, but doesn't that suggest that in fact there is a persistent protein

difference between HRW and HRS?

MR. YEO: I'm just saying these characteristics principally reflect the gradation of protein across HRW and HRS. My basic point there was simply you can't draw a clear dividing line between those two classes of wheat with respect to the protein content, especially because, as we've heard, there's a huge amount of variability year over year.

MR. DIEHL: Okay. That's a point that I think maybe is not that clear on the record either way because I think the testimony from the group of Petitioners in the morning was that it's not just protein content. There are qualitative differences.

I think you're saying that these data look different because of the protein differences, so that's a point open for debate in your submissions.

MR. YEO: Very well.

MR. DIEHL: Okay. This is all the questions I have. Thank you.

MR. FEATHERSTONE: Okay. Thank you all very much for your presentations and answers to the questions.

Ten minutes, Mr. Hunnicutt?

MR. HUNNICUTT: It's up to you. We're ready now.

MR. FEATHERSTONE: No, no. If you're ready to go, we'll continue with the closing statements.

(Pause.)

MR. FEATHERSTONE: Welcome back, Mr. Hunnicutt. Please proceed at your convenience.

MR. HUNNICUTT: Thank you, Mr. Featherstone. I commend everyone for their stamina and thank you for your attention. I'm going to make just a few brief comments and then turn most of the factual rebuttal over to Neal Fisher. This is Charles Hunnicutt.

First, I do want to say that any morning where I have Mr. Dick Cunningham agree that there is a year in which there is an increase in imports in one of the like products I consider a good day's work and will take what I can get.

Secondly, I will address the issues of cold-rolled steel primarily in our post-conference submission, but it did occur to me that, of course, as grand as Section 201 impacts are and the escape clause mechanisms of the WTO, they are not an act of God, and there are some distinctions to be drawn right away in that regard.

I also want to discuss one issue related to that that we will also cover in our post-hearing submission. As Mr. Featherstone knows, -- the rest of the audience doesn't -- I've left my glasses at home today, so I may get this a little bit wrong, but looking at the September 24 *Miller and Baking News* and a discussion of recent semolina prices, the quote is, "But since then, the dispute between the North Dakota Wheat Commission and the Canadian Wheat Board flared

up again, and the CWB withdrew offers." The reason we're seeing the CWB withdraw from this market is in fact this investigation and not any other factors that are impacting on it.

Related to an analysis of the drought, which is the other factor there, I would again argue that looking back to the historical patterns of the impact of droughts on this agricultural market are inappropriate methodology for analysis even if they fall out of the period of investigation; not that you would expect an exact replication, but in order to understand what a normal market reaction to a drought situation would be, the last time you've seen that is 1988. The Commission should look at how that episode played out in determining whether this is a normal market reaction this time.

I did want to mention just in passing that Wan Ku was cited as an economist for the Petitioners. While Wan Ku is an excellent academic ag economist, he is not our economist. We have simply cited to his academic work and is not related to the Petitioners.

I also wanted to mention to clear up any confusion that we're not arguing that all injury that has occurred to this industry since the beginning of the Canadian-United States Free Trade Agreement is what we're arguing about here. We are arguing that we have a strong case based on

the period of investigation, but that one cannot ignore what has led up to this situation. I think it's related in some ways to how a free market plays out in a commercial manner in an agricultural commodity, and that's related to the argument that we've just heard eloquently put forward by the millers.

I think there's an issue, a clear, fundamental issue, of respect to the argument of the millers that the entire so-called shortage or insufficiency analysis presumes that the imposition of antidumping and countervailing duties will eliminate Canadian imports. Of course, this is not the case.

The duties would shift share at the margin back from the CWB to domestic producers, but Canadian imports would undoubtedly remain a significant portion of the U.S. market for durum. The prices would be somewhat higher, which results in an improved domestic financial performance for the U.S. growers, but then there would be no shortage. Markets would clear without the distortions introduced by the dumping and the countervailing duties.

I guess the only hypothetical shortage that I think could occur that they could really claim would apply to the total value of Canadian wheat actually specified by the millers' customers each year. They have not given a single customer who will only use Canadian wheat. They

should list all of those.

They've not given the volume of Canadian wheat specified to each customer to the exclusion of U.S. wheat. They should be required to do so in order to make this claim. That way the Commission can verify the claim and see what percentage of Canadian imports respond to this hypothetical, presently undocumented claim of a preference for Canadian wheat.

With that, I'll turn this final rebuttal over to Mr. Fisher.

MR. FISHER: Thank you for this opportunity. I have several points. Many of the issues raised will be covered, as Charlie said, in the post-conference submission. Charlie covered a couple of the points that I was going to make, so that's going to shorten this a bit, which will be a good thing.

On the issue of the like product issue between hard red winter and hard red spring wheat, I find some of the examples that have been cited problematic, quite frankly. I'll cite some examples just from trade experience. One, and I suppose one of the most obvious, is that the Canadians very vigorously segregate their winter and spring wheats. I think there's some evidence that there is not the great degree of substitutability that was referred to here in some of the comments.

I also found some of the exhibits in that presentation more than a bit flawed, or at least the interpretation of them. Maybe that would be the better way to say that. For example, in doing a like protein or like commodity analysis of the Pacific Northwest, few, if any, customers ever buy any 13 protein hard red spring wheat off that market. All of the proteins are oriented to the upper end of the spectrum because that is the market. No one in the Asian market is looking for low protein wheat. They're all looking for 14s and higher, so that's a flawed example I think that was cited there.

I would view the hard red spring wheat/hard red winter wheat relationship more complementary certainly than substitutability. Also in those quality charts that someone made reference to earlier, Exhibits 5 through 7 I believe, I think these actually draw very clear lines between the two classes of wheat.

An alveograph of 225 to 250 would be a disaster in a spring wheat, and those are a reference to those charts, whereas the average of a spring wheat crop is around 350 on the alveograph W values, and they can be found in the U.S. Wheat Associates' information that he cited indicated out into the 400 range.

On the absorption there's also clear separation, and in the stability certainly when you look at these values

while if we're not cereal scientists they may look like they're similar, they are not. In absorption, something below 60 or those that are above 60 in that example, and I think that was Exhibit 6, those are extreme differences, and there is no continuum I think as there was referred to earlier.

I think another question might need to be asked there. I didn't hear much discussion about the industry substituting CRWS or the Canadian version of hard red spring wheat for hard red winter in any of the discussion that you just heard. It usually was a substitute for spring wheat. I think that also is another one of the separations that maybe should be considered here.

In the area of price, some of the folks have commented that they weren't economists. That was apparent. I don't know why a shortage does not incite some interest in the price. When you see prices as depressed as they've been over the last four years, and three of those four years are included in the POI, for that price not to flicker upward even once during that period of these pronounced shortages, I find that very interesting.

Also in that equation of the perceived needs of the industry there was no desert durum, the 15 to 20 million bushels of U.S. durum that is of high quality produced in Arizona and California. It was not given a mention in the

equation.

Also, in terms of that equation on the industry needs no one needs a 40 million bushel carryover in durum. Pipeline supplies have been as low as half of that, and prices still did not respond, by the way, so I think there's some overstatement of the industry needs.

There is also an issue with the vomitoxin. If we want to make this a debate in the public record about a toxin in the food supply I guess we can do that, but maybe that's not such a good idea. I think it's been overrated, and I think maybe I would sample that sample that was passed around.

The protein issue sometimes is confused. In some of the discussion we just heard, it was commented that protein is an issue in durum. The only time I ever heard that as an issue was when some of the gentlemen seated here made it an issue about three years ago when protein was a shortage in durum. Otherwise they're right. Protein is typically not a big issue. Most of the labeling that they have from their companies indicates a 12 percent product content, and I think most of the time the crop is consistent with that, and there usually is not a problem except when they vocalize it.

On the issue of the blended pastas with other wheats, I think that is a phenomenon that has largely

passed. However, the representatives of this industry vigorously defended that when that was an issue when they felt inclined to blend spring wheats or winter wheat farinas with the semolina made from durum wheat.

On the forward contracting issue, this is a big issue, and it definitely keeps prices flat. That's the intention of it. There's a reference to a minor carrying charge that was mentioned. It has been hard to uncover any evidence of a meaningful carrying charge in that discussion of any of the forward contracts that come from the Canadian Wheat Board. It's not a factor that's out on the table, or I've not seen it, and it further implies I think that this is mostly about prices and keeping them flat rather than about shortages and availability.

That's all the comments I have right now. I would like to thank you for the opportunity to share some of those comments, and we will make a more complete report in the post-conference submission.

MR. FEATHERSTONE: Thank you, Mr. Fisher and Mr. Hunnicutt.

MR. CUNNINGHAM: I'll be very brief, Mr. Featherstone. There are three or four points that I think you should keep in mind as you evaluate this case. First is that every aspect of the injury that is claimed by the Petitioners turns on the question did imports depress prices

or suppress prices in the U.S. market.

I don't think that argument can stand on the facts of this case, and in assessing that argument, indeed assessing the case as a whole, I think you should ask yourself three successive questions.

First, is this industry today being hurt by the adverse impact of imports; that is, the current action of imports in the marketplace. That is, after all, the mandate that this Commission says that it has from the statute, and they're right. I would refer you to Cold-Rolled Steel at page 31 where the Commission quotes its mandate as being to look at the time period that provides probative, reliable data in as contemporaneous a time period as possible.

So let's begin again by looking at the current period. I submit to you that you don't find any injury caused by imports. You don't find any adverse effects of imports in the current period. I think that is beyond doubt on the record in this case.

Let me pause there to talk about the role that the drought plays in this. The role of the drought is it's what the Petitioners offer to try to explain away the fact that when you look at the industry now, the market now, there is clearly no adverse impact of imports. It is on that point that Cold-Rolled Steel is relevant because they are the ones, the Petitioners, that are saying that the drought is a

watershed event. It changes things so as to explain the health of the industry. That's what the 201 was in Cold-Rolled Steel.

Like the 201, the effects of the drought will continue for essentially a year. As I emphasized earlier today, there's no evidence as to what is likely to happen in this market after that year. There's no evidence of any likelihood of injury after that year. It just says the 201 will continue until at least the midterm, approximately the same time from the Commission's final determination in the Cold-Rolled Sheet case, which is coming up, until the midterm, about the same time length as the drought period will affect this crop year.

Okay. The second question you should ask yourself is is there any evidence, is there any real valid case here, during the period of investigation that the action of imports during that period has caused material injury to the domestic industry. The trend analysis clearly refutes that. Both products' prices rose during the period. In durum in particular, prices rose significantly during the period. Remember, the Petitioners' focus in this case is on imports' affect on price, and all of their other arguments of injury are derivative from that.

Now, you also have the underselling evidence throughout the period, and you have it throughout the period

because you have not only here what you did, not only your questionnaires here, but you have it in what you did in the 332. You will find that a case of rising prices in the marketplace, no significant underselling by the imports and all injury claimed being derivative from alleged price effect. That's a case where you're compelled to have a negative decision. There's just nothing on the record.

That brings me to the point that you made, which is the third question, which is doesn't this case just boil down then to the argument that imports depressed prices, as they put it, beginning in 1996 through September, 1998. That's the period they say in their petition. They don't give any evidence of how imports operated. They don't have any analysis to that effect. They show a declining price at that period. Okay.

I submit to you, first of all, that that's the question that the Commission pretty squarely decided in Cold-Rolled Sheet; that you don't go back and ask. That's too long ago. It's not contemporaneous. It's the farthest thing from contemporaneous.

Finally, as I step back from this let me just say that I really do believe this is not a case about effects of dumping or subsidization on Canadian imports. The fact that their basic argument when stripped of all of the allegations that are clearly refuted, the allegations related to their

present situation, the allegations related to what went on in the period of investigation, their argument necessarily goes to the change and the circumstances of trade and the conditions of trade between the United States and Canada that occurred during the 1990s when we had first at the end of the 1980s the elimination of barriers, of tariff barriers to imports of wheat followed by a significant increase, as one would expect in the imports of wheat, interrupted briefly by the TRQ.

Since then, and we'll give you some graphs and some charts in the post-hearing brief. Since then what you see is that imports returned to the level that they had been before the TRQs, as you would expect, and then they have on balance stayed stable or gone down from that level since then.

What this case is about then is the ascent of imports to that level in a time period that's not relevant to this investigation and for a reason, that is the liberalization of trade between the U.S. and Canada, that's also not relevant in this investigation.

Particularly in a bilateral issue as important as wheat, we can't use the antidumping law to try to reverse U.S.-Canada trade policy. What you need to do is do what the Commission traditionally does; look at present condition, look at the period of investigation, look at

trends in the period of investigation, look at underselling in the period of investigation, look at all the things that so clearly in this case require a negative determination.

MR. FEATHERSTONE: Thank you, Mr. Cunningham.

Just a couple of real quick administrative reminders. The deadline for the submission of corrections to the transcript and briefs in these investigations is next Wednesday, October 9. If briefs contain business proprietary information, a non-proprietary version is due the following day.

The rest of the schedule is uncertain at this point because the Commerce Department has extended the time period for its initiation decision. Assuming that Commerce does initiate that, the parties will be able to, if you want, submit comments specifically on anything that Commerce says in we'll say something like two working days after Commerce announces so that everybody knows the date.

Likewise, as soon as we are able to set a date for the vote we will immediately notify parties.

Thank you again for your participation. This conference is adjourned.

(Whereupon, at 2:52 p.m. the preliminary conference in the above-entitled matter was concluded.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Durum and Hard Red Spring Wheat

INVESTIGATION NO.: 701-TA-430 and 731-TA-1019 (Preliminary)

HEARING DATE: October 4, 2002

LOCATION: Washington, D.C.

NATURE OF HEARING: Preliminary Conference

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

DATE: October 4, 2002

SIGNED: LaShonne Robinson
Signature of the Contractor or the Authorized Contractor's Representative
1220 L Street, N.W. - Suite 600
Washington, D.C. 20005

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceeding(s) of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker-identification, and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceeding(s).

SIGNED: Lorenzo Jones
Signature of Proofreader

I hereby certify that I reported the above-referenced proceeding(s) of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceeding(s).

SIGNED: Beth Roots
Signature of Court Reporter